"ZERO TOLERANCE" DRUG POLICY AND CONFISCATION OF PROPERTY

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE U.S. GOVERNMENT POLICY ON "ZERO TOLERANCE" IN DRUG ARRESTS TO TRY TO CURTAIL THE FLOW OF DRUGS, AND THE SYSTEM FOR DISPOSAL OF CONFISCATED CONVEYANCES

MAY 26, 1988

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CONTENTS

	Page
Statement of:	
Anderson, Betty, Deputy Chief Counsel, U.S. Customs Service	9
Califa, Antonio J., legislative counsel, American Civil Liberties Union	55
Prepared statement	83
Clement, Hon. Bob, a U.S. Representative from Tennessee	8
Coble, Hon. Howard, a U.S. Representative from North Carolina	6
Davis, Hon. Robert W., a U.S. Representative from Michigan	3
Greenhalgh, Prof. William, Georgetown University Law School	57
Herger, Hon. Wally, a U.S. Representative from California	7
Horan, David P., attorney for David L. Phelps	45
Hutto, Hon. Earl, chairman, Subcommittee on Coast Guard and Navigation	1
Jones, Robert P., executive director, Southeastern Fisheries Association	50
Prepared statement	72
Phelps, David L., owner of seized fishing vessel	45
Pickett, Hon. Owen B., a U.S. Representative from Virginia	60
Putnam, B.J., board of directors, Southeastern Fisheries Association and Bay County, Florida, Charter Boat Association	50
Schill, Jerry, executive director, North Carolina Fisheries Association	52
Vance, Wayne, general counsel, Department of Transportation	12
Von Raab, William, Commissioner, U.S. Customs Service	9
Prepared statement	61
Yost, Adm. Paul A., Jr., Commandant, U.S. Coast Guard	11
Prepared statement	67
Additional material supplied:	
Customs Service:	
Cost of bonds	32
Evidence seized from *F/V Little Bear*	27
Innocent owner petition for return of a conveyance	31
Jones, Robert P.:	
Article: Intolerable, by Stephen Parmisano	82
Article: "Zero Tolerance" is a Joke, by Russell Moore	79
Note from Bill Moore	81
Petition against the seizure of *M.V. Miss Lorraine*	80
Organized Fishermen of Florida: Incident of May 7, 1988, concerning vessel *AGAPE*	77
Seized property receipts	104
Smith, Richard F.: Article: Fisheries group says seized drug was baking soda	114
Transportation Department:	
Zero tolerance fact sheet	98
Zero tolerance guidelines	95
Zero tolerance policy on illegal drugs	116
Communications submitted:	
Amason, Jack L. (Valona, GA): Letter dated May 12, 1988, to Robert P. Jones	78
Burnley, Jim (DOT): Letter of June 20, 1988, to Hon. Walter B. Jones	112
Coast Guard: Memorandum to all districts on zero tolerance public awareness program from the Commandant	119
Goodin, Mark (DOT): Letter of June 7, 1988, to Hon. Earl Hutto with enclosures on zero tolerance policy	115
Harville, David P. (owner *F/V Little Bear*): Letter of May 25, 1988, to Rod Moore	101
Communications submitted—Continued	
Von Raab, William (Customs Service): Letter of May 26, 1988, to Hon. Earl Hutto	109

"ZERO TOLERANCE" DRUG POLICY AND CONFISCATION OF PROPERTY

THURSDAY, MAY 26, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 1334, Longworth House Office Building, Hon. Earl Hutto (Chairman of the Subcommittee) presiding.

Present: Representatives Hutto, Hughes, Studds, Carper, Pickett, Brennan, Hertel, Bennett, Lowry, Clement, Davis, Young, Bateman, Coble, and Saiki.

Also present: Representatives Saxton, Miller, and Herger.

Staff present: Gene Hammel, Jeanne Timmons, Larry Innis, Ed Welch, Lee Crockett, Duncan Smith, Rebecca Feemster, Sherry Steele, Sue Waldron, Marsha Canter, Jim Witkowski, and Marian White.

Mr. HUTTO. The Subcommittee on Coast Guard and Navigation will come to order.

We will recess the Subcommittee for a few minutes because the bells have rung, and as you can see, two white lights on the clock, we are going to have to go vote. We will do that and be back here and ready to go within 10 minutes. I would ask the Members to please get back promptly.

[Recess.]

STATEMENT OF HON. EARL HUTTO, CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. HUTTO. The Subcommittee on Coast Guard and Navigation will please come to order.

We are here this morning to talk about war. Really, it is a war that a lot of people know about, are concerned about. A lot of people want to do something about it, but it seems we are kind of helpless at times.

We tried to throw some money at the problem with the omnibus drug bill a couple of years ago, and hopefully that has helped some. But overall it hasn't done much to tone down this war on drugs.

We want to do something about eradication at the source. Of course, it's important that we have interdiction, that we have enforcement, that we have rehabilitation, and that we have education. We have to deal with all facets of the war.

My personal opinion is that we do have to do what we can with interdiction and enforcement, but in the final analysis I think we must control demand. We have to let our young people and all Americans know that we can't allow this terrible habit of taking drugs. One time could mean a distorted mind, an altered mind, it could mean the fouling up of one's life, it could even mean the loss of his or her life.

So we just have to do our best. That's why we are here today, to try to work some things out.

I'm sure it will come as no surprise to some that this is the Subcommittee on Coast Guard and Navigation, not the Ways and Means or the House Banking Committee, that is convened to discuss the supply and demand of the biggest business in the world—drugs. This year the drug trade will do at least $300 billion worth of business, an amount equal to the United States' proposed budget for national defense.

Indeed, America's posture in the drug war has been primarily a defensive one. Most of the millions spent on the drug war to date have concentrated on defending our borders, on cutting off the supply of drugs to the United States. Federal, State and local law enforcement officers have manned the borders, monitored the air and scoured the seas in an attempt to stem this flow of poison from source countries to the United States.

There have been some successes. Last year, Federal law enforcement agencies busted a large amount of illegal narcotics entering the country, more than ever before. The best indicators, however, demonstrate that there have been even more failures. The price of cocaine on the street is the lowest it has been in a long time. Violent, drug-related crime is at an all-time high in our Nation's cities. Addiction levels are on the increase, and the cost to the United States in loss of health and productivity due to drug abuse is escalating.

We will not abandon our efforts to cut off the supply of drugs, but the evidence indicates that we cannot rely primarily on this defense to solve our problems. It is time for offense. Many users consider themselves or even their friends who abuse drugs as isolated cases. It is easy to see how they can think this way. The United States is the world's biggest consumer of illegal drugs.

The market for illegal narcotics within the United States cuts across age, gender, social, economic and geographic spectrums. The famous rock star, the 9-year-old ghetto child, the Beverly Hills lawyer, the Harlem prostitute, the middle-aged housewife, the teenage prom queen, the high school drop-out, the yuppies on vacation—all are links in the chain clasped eventually to the pusher on the street, the smuggler in South America.

Under the law, all of them are as guilty as the rest. It is time to make greater efforts on this end of the equation. It is time to make American consumers of a product that destroys them, their families and their cities pay for this destruction. It is time, in short, to make users accountable.

This is the aim of zero tolerance—a rigorous enforcement policy recently adopted by Federal law officers to combat illicit drug use at its source.

The National Drug Policy Board, in conjunction with the White House Conference on a Drug-Free America, earlier this spring endorsed a policy of strict enforcement of drug laws already on the books in an attempt to demonstrate that possession of illegal drugs, no matter how small the amount, will not be tolerated.

The U.S. Coast Guard and the U.S. Customs Service began a crackdown in all cases where illegal drugs were present—on the water and at the borders. Federal officials have confiscated all manner of conveyances by which drugs have been transported, from bicycles to 18-wheelers, from dinghies to yachts.

I agree with the concept of zero tolerance. However, there are aspects of its practical application that greatly concern me. In these attempts to target users—to make them pay—it appears that fundamental tenets of fairness are being violated. In some instances, it looks like the punishment has not fit the crime, innocent persons have been hurt more than users, and the burden of proof of their innocence has been placed on people absent at the time of actual seizure. Fishermen and innocent crew members who depend on their vessels for their livelihood now are constantly at risk. No guidelines to assist them in complying with the law have been issued. They do not know what they must do to protect themselves. It is imperative that the Government provide guidelines, and do so very quickly.

We are here today to look into the implementation of the zero tolerance policy. We must support those who fight at the front in this war on drugs, but we must not forget what it is we are fighting for. When innocent persons are precluded from making a living due to overzealous enforcement of the law — when shrimpers lose a week's work or more because of trace amounts of marijuana dropped by a crewman, when a charter boat captain has his vessel seized because of a joint left by a passenger, when a father has his car confiscated because of some residue left by his children's friends—it is time to take a hard look at all of these things, to reevaluate and to adjust.

I believe that it is imperative that a policy of "constructive seizure" be implemented for the protection of the innocent owner or captain of a vessel subject to seizure in order that the livelihoods of many people are not jeopardized through no fault of their own.

I look forward to examining various situations— some actual, some anticipated—that have arisen or could arise under this policy. I am sure that there are many questions and comments for our witnesses today, and I am sure the subcommittee members are as anxious as I am to learn more about what is being done in the name of demand reduction. We must work together to find an effective offense for the drug war that is also equitable to those striving to make a legal living.

Mr. HUTTO. Now we turn to our Ranking Minority Member on the Subcommittee, Mr. Davis.

STATEMENT OF HON. ROBERT W. DAVIS, A U.S. REPRESENTATIVE FROM MICHIGAN

Mr. DAVIS. Thank you, Chairman Hutto.

I am pleased that we have the opportunity to review the administration's recently revised policy on enforcement of a zero tolerance drug criteria for arrest and/or seizure. Having this hearing is most appropriate.

Drugsmanship is very popular. It is, however, nothing more than political one-upsmanship to see who can out talk, out spend, or otherwise out do a political opponent. I predict we will see more of this as the days go on. It means that we will have many blackmailing those in public service on generalities and classic guilt trips because we are soft on drugs.

Frankly, Mr. Chairman, I was elected to my position by my constituents, as all of us were, and I will not be blackmailed by anyone for any reason. I will not forsake my public responsibilities to them and work to ensure that the rule of law and not the rule of rhetoric prevails. Although tempting, we cannot hide behind slogans. Extremism in pursuit of even the loftiest goal can supersede our overriding duty to practice fundamental fairness.

Blind disregard of those principles that our forefathers carefully preserved in our Constitution in the Bill of Rights is simply un-American.

This type of hearing can very easily degenerate into nonproductivity if any of us, Members of Congress or administration officials, adopt the attitude that if you question any of my positions, you are by definition opposed to the goals of my program.

I believe that all of us are vitally concerned about the problem of drugs in America. Clearly, those of us who are here are especially interested because of the jurisdiction of this subcommittee over interdiction of drugs being brought into this country or over the high seas.

The members of this subcommittee have and are continuing to develop a number of alternative pieces of legislation aimed at controlling drug trafficking and drug use. These alternatives are different, and no doubt there will be disagreements on which provides better authority. However, there is no question that all of us who are involved in these efforts are motivated solely by the desire to address the problems as effectively as possible.

Neither do I question the motives of the administration witnesses who are scheduled to appear here today. However, I do have some legitimate questions about the effect and effectiveness of the recent changes in policy which have been put in place.

First, while I strongly support the maxim that drug users must be made accountable for their actions, I must ask if the seizure and detention, even if temporary, of a vessel where persons other than the owner have been found to have personal use quantities of marijuana is in fact addressing the accountability of the user.

The highly publicized seizures of, among others, the *Ark Royal* and the *Atlantis II* would not seem to have achieved that stated aim. There is no question that the seizure and detention of a fishing vessel can have a disastrous effect on the livelihood of the owner and the crew. If they are not the guilty parties, what benefit has resulted from the loss of their means of making a living, even if it is only temporary?

Second, I must ask if this is the most effective use of our already strained resources. We have spent the last 6 months trying desper-

ately to find additional funding to supplement the disgracefully low funding levels appropriated for the Coast Guard for this fiscal year. We are desperately trying to keep the same thing from happening for fiscal year 1989. Is the implementation of this policy going to divert resources from interdiction of drug trafficking or from traditional search and rescue missions? Are there better ways to accomplish our goal?

Third, with the extremely high level of controversy which has surrounded this policy to date, are we not perhaps losing the support of a significant portion of the population who also question its effectiveness and fairness? Let's face it; that's why we are here today because in the minds of the public this is a government policy that perhaps has gone awry. It symbolizes unfairness. It punishes the innocent and lets the guilty go free. It gives the government a license to steal rather than guidance to carry out an effective program. Drug abuse is too great a problem to be sidetracked by these issues.

Earlier this week the White House announced a change in this policy. I welcome this as it shows that our President is not afraid to admit that he may have made a mistake on this one. It shows that fairness, not misguided principles, have prevailed.

Now, lest I be misunderstood, let me just say that we don't want to send the wrong signal. We want to send a signal to law enforcement that we support their efforts within the context of the rule of law. We want to send a signal to those who use or traffic in drugs that we think it is wrong and it must stop. But most important, we want to send the signal to the American people that their Government is under control and we will treat them fairly.

Mr. Chairman, I am very much interested in hearing our witnesses discuss and hopefully answer these questions. I welcome them and look forward to a very constructive dialog.

Mr. HUTTO. Thank you, Mr. Davis.

The gentleman from Massachusetts, do you have an opening statement?

Mr. STUDDS. Mr. Chairman, I don't have an opening statement. I am not going to make one of any length.

I would like to take one moment, if I may, to commend the gentleman from Michigan. That is one of the outstanding statements I have heard on this subject.

I was noticing a quotation from the Attorney General of the United States on March 30 of this year when he was defending and explaining with great enthusiasm the new zero tolerance program. He said many users do not see themselves as criminals. The shock of arrest and conviction sends a strong message to the user that his costs could be measured in terms of money, inconvenience, and public ridicule.

Mr. Chairman, I think we have seen the tables turned by an overly enthusiastic government on itself, and the costs to our government have been precisely money, inconvenience, and public ridicule.

I commend the gentleman from Michigan. I commend the Chairman for calling this hearing.

Mr. HUTTO. Mr. Coble.

STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. COBLE. I'll be brief, Mr. Chairman. Most of what should be said has been said. You and the Ranking Member have touched on it.

We in this room know that drugs are an ominous threat in the eighties and in the next decade as well. Any time one poses a second side to the coin, he may be viewed as being weak on drugs. That's certainly not the case when I pose a second side.

I want to be convinced that seizing pleasure yachts; laying up fishing vessels for two or three weeks; getting them out of commission when small quantities of marijuana have been detected is a judicious use of our limited Coast Guard resources. I am not suggesting it isn't. I think that can be illuminated as we advance in this hearing today.

I am not suggesting either, Mr. Chairman, that zero tolerance should be gutted. But surely there may be some realistic middle ground that we may be forced to plow. For example, we deal with Noriega. We dignify this drug thug to the south by presumably begging him to accept our deal on the one hand, and then we haul in a fishing vessel and get it out of commission on the other. Something doesn't fit there.

I am hoping that today's hearing will, as I said before, shed some illumination on a subject that I know is driving us all to our respective wit's ends.

Mr. Chairman, with that in mind, I appreciate your having staged this hearing today, and I look forward to hearing from the witnesses who will appear before us.

Mr. HUTTO. Thank you, Mr. Coble.

Does any other member have an opening statement?

Mr. HUGHES. Mr. Chairman.

Mr. HUTTO. Mr. Hughes.

Mr. HUGHES. Mr. Chairman, I don't have an opening statement. I just want to, first of all, congratulate you in convening this very timely hearing and also to congratulate you and the ranking minority member, Mr. Davis, for excellent statements. I would like to associate myself with those statements.

I was just saying to the staff that these statements sound like some of the things that I expect to say tomorrow to the Coast Guard Training Center as they graduate their newest recruits.

Mr. Chairman, in addition to serving on this committee, which is an honor and a privilege, I chair the Subcommittee on Crime, and we oversee the operations of the Drug Enforcement Administration, authorizing their budget and providing oversight internationally and domestically to their operations. I am convinced, like most of my colleagues, that there is no quick fix. We are not going to win this war on drugs by a lot of rhetoric, a lot of gimmicks and slogans. It is a matter of making a commitment to a comprehensive strategy and providing the resources that are necessary.

The zero tolerance policy just wasn't thought through before implementation; pure and simple. I welcome the mid-course correction, whatever you want to call it, that has taken place. I think that we are on the right track.

But frankly I am concerned over the one-upsmanship that my colleague from Michigan alluded to. On the floor of the House we face it all the time. Everybody has to demonstrate that they are tough on drug traffickers.

When it comes to zero tolerance, I have no sympathy for drug users. Without users, we wouldn't have traffickers. The community does have to get more involved, but we have to develop a policy that makes sense, that is fair and equitable. Our whole system of criminal justice is based on the notion of fair play, commonsense, and equity. Zero tolerance as has been implemented just brings disrespect to the law that we are called upon to enforce.

With regard to the military, everybody believes that all we have to do is bring in the Army. Well, you can't chase cigarette boats with destroyers. The military can do a great deal more than they are now doing. They do provide some intelligence. They can do better. They can provide more equipment and manpower, and we can utilize their radar at the borders.

But, Mr. Chairman, the answer is to provide the resources that the law enforcement community needs. The military are not law enforcement officials. They are soldiers. We don't want to have the fleet tied up in court while defense attorneys make motions to suppress. That is precisely the direction we are heading, unless we get our heads screwed back on right again and deal with drug problems intelligently.

So, Mr. Chairman, I welcome this hearing today. I look forward to hearing from the administration witnesses and all the witnesses that follow. Thank you much.

Mr. HUTTO. Thank you, Mr. Hughes.

Mr. Herger.

STATEMENT OF HON. WALLY HERGER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Mr. Chairman, as a father of eight, and as a legislator, I want to personally applaud the administration's get tough, zero tolerance policy against drug use in this country.

Drug abuse is an epidemic which threatens not only the security of our nation, but the future of our children. It is a challenge which we must deal with courageously, decisively, and with conviction. I believe that the policy is a sound one despite the controversy that it has generated. Certainly there will be a need to make adjustments and modifications in its implementation. Indeed, fine tuning should be both expected and encouraged. The policy represents effective enforcement of our existing laws. It's purpose is simple: those who use illegal drugs, regardless of how often or how much, are contributors to the illegal drug trade. Without their demand, there could be no supply.

Zero tolerance has been successfully used by the U.S. Attorney's office within my own home State and in southern California and can, if properly applied, be used in the rest of our nation as well.

I look forward to the testimony of our witnesses. Thank you.

Mr. HUTTO. Thank you, Mr. Herger.

The gentleman from Tennessee, Mr. Clement.

STATEMENT OF HON. BOB CLEMENT, A U.S. REPRESENTATIVE FROM TENNESSEE

Mr. CLEMENT. Thank you, Mr. Chairman. Thank you for convening this hearing on the Coast Guard's implementation of the administration's zero tolerance drug policy.

Let me first commend the Coast Guard for doing a good job with what is a confusing, as well as a controversial, drug seizure policy. Although the policy has now been modified, I believe as initially announced, the policy contained the germs or elements of a get-tough policy which the American people will support.

In my district the citizens are tired of the attitude that "only a little bit of marijuana for personal use is OK" as well as the attitude that "no one is hurt by the person who only smokes a joint."

My constituents want a tough policy, and that policy is that no amount of drugs is OK. In other words, use drugs and pay a price.

The key to such a policy is to vigorously enforce it, and the issue at today's hearing is whether seizure of assets is the price to extract from offenders.

I believe we must set that price from a perspective which takes into account the seriousness of the problem which the nation must solve. No one who is here today has said that drugs and drug use are not a serious problem.

Consequently, Mr. Chairman, we must recognize that drug users are as much of the problem as drug dealers. The drug market is not made up solely of the dealer who sells hundreds of pounds of drugs to another dealer. It is also made up of the thousands of individual users who each day comprise one of the thousands of the sales transactions which takes place not only on the streets of our cities, but also in the most elegant of homes, offices, bars and restaurants.

Admittedly, Mr. Chairman, there is a question of fairness when we hold liable the owner on whose premises guests use or possess drugs. But many of our States have already addressed this question on comparable issues. States, for example, have enacted dram shop laws to hold tavern owners liable, and they also have enacted tort laws to hold employers liable for the tortious acts of their employees.

Just last week, Mr. Chairman, 15 Members of this Subcommittee voted for the Walker amendment to hold Federal contractors liable for drugs found on their employees in the workplace.

Thus, the answer to the question of fairness focuses not on the propriety of seizure, but on the issue of due process once a vessel is seized. How quickly can the owner of the vessel recover it? How much bond must be posted? How quickly are judicial proceedings initiated?

Lastly, Mr. Chairman, we must consider the issue of deterrence. Drug dealers are not deterred when they must surrender or abandon boats, aircraft, or cars worth thousands, if not hundreds of thousands of dollars. To them, it is the cost of doing business. How much are those who use drugs recreationally willing to pay? For some, a slap on the wrist or a misdemeanor fine is sufficient. For most, I suspect it will take more to deter their drug use.

The zero tolerance policy, in my view, contains the elements of how much it will take to deter the drug user.

Thank you, Mr. Chairman.

Mr. HUTTO. Thank you, Mr. Clement.

Of course, all of us have strong feelings about this menace to our society, but I would advise members that if they want to submit their statements for the record, they may do so. All members may do that.

Mr. HUTTO. We have three panels of witnesses that we will hear from today. The first panel is Mr. William von Raab, the Commissioner, U.S. Customs Service, Admiral Paul A. Yost, Jr., Commandant, U.S. Coast Guard, Mr. Wayne Vance, the general counsel for the Department of Transportation.

Mr. von Raab, I know that you have been actively involved in the zero tolerance policy, and we are delighted that you are here to talk about that today. We recognize you at this time. You may proceed as you see fit.

STATEMENT OF WILLIAM VON RAAB, COMMISSIONER, UNITED STATES CUSTOMS SERVICE, ACCOMPANIED BY BETTY ANDERSON, DEPUTY CHIEF COUNSEL

Mr. VON RAAB. Thank you, Mr. Chairman, and members of this committee. I have a longer statement that I would ask to be submitted for the record.

Mr. HUTTO. Your prepared statement will appear in the record.

Mr. VON RAAB. Your committee will no doubt be aware, or already has been aware, that I have submitted a letter to each of you personally describing the zero tolerance program. This letter has been sent, or will be sent today, to all members of the Senate and the House of Representatives.

I am appearing before you today to reiterate the hard facts about the number one domestic problem in this country.

First off, I would like to tell you that I am very happy to explain our program because whether we use the words of Congressman Hughes, "fair, common sense and equity," or the words that I've been using, "tough, fair and judicious," I am sure that after you examine the cases that you will be examining, you will find that our program is not only constitutional, but also that it is supported by the Supreme Court as recently as 1974, and is supported and implemented by legislation that this Congress passed no less than two years ago. Lastly, of course, it is supported by the American people.

Many people use the phrase "War on Drugs" because it sounds good. I use it because I mean it. We are in a state of war, Mr. Chairman. We are, whether we realize it or not, involved in a war in which the enemy at least has declared war on us. It is a war in which the casualties are not reported as such by the news media, but they are found in every city and every neighborhood. Addicts die of overdoses. Law enforcement officers have been slain by drug dealers.

The Government of Colombia has virtually been paralyzed by fear and terror introduced by narco terrorists. Other countries have found their top officials totally corrupted by the lure of the enemy's vast financial resources.

Each year, the Customs Service sets new records for the amount of cocaine seized at our nation's border. Each year, more personnel, more equipment, and more effort is expanded fighting the drug war. Every year the situation has gotten worse. The enemy's war machine produces more and more drugs, develops more and more sophisticated methods of evading detection, and acquires more influence and power.

We are moving forward simultaneously on many fronts. Mrs. Reagan's crusade against drugs has helped raise our public's consciousness on drugs. Schools are increasing their efforts to educate young people about the dangers of drugs. The U.S. Senate has spoken forcibly to foreign nations telling them to do more to stop the production and transportation of drugs within their countries.

I have felt for some time that we must open a new front on the drug war, the user population. There are three kinds of education that must be meted out in this drug war. One is the conditioning of those individuals who are too young or too unsophisticated to understand the drug problem, and we have done a good job on that. Attitudes have changed.

Second, are those people who need to be intellectually convinced that drugs are a problem. We are working on that. I think we can do a better job there.

But lastly, unfortunately, there is a population that needs to be compelled to understand the dangers of drugs. Those are our addicts, those are the users, those are the arrogant stockbrokers and smooth lawyers who think they are above the law.

That front now has a new name: zero tolerance. Zero tolerance means we are not going to accept the importation or export of elicit drugs in any amount at any place on the border, at any time, by anybody. Drug users create the demand that fund the drug enemy's war machine. Drug users have been immune from the consequences of their actions since the early seventies when this country in effect legalized drugs by not doing anything other than issuing hundred dollar fines to people who brought drugs into the United States in smaller user amounts. That has stopped. That has changed.

Zero tolerance was originally developed in conjunction with Pete Nunez, the U.S. attorney from San Diego. Everyone caught crossing the border with drugs with a measurable amount was charged with a misdemeanor and a felony. If they pled guilty to the misdemeanor, the felony charge was dropped and the violators were put to work doing community service.

On March 21, this program went nationwide at Customs, and the Coast Guard followed suit on April 11. I might point out that until the Coast Guard followed suit and began to seize the boats of rich people who had a lot of pull with the media and with Congress, we didn't hear much about this program. We didn't hear many complaints. But as soon as those individuals who had access to those resources, in which they could make some comments about losing their fancy yachts, on many of which were residues of huge pot parties and shooting galleries, then we started to hear complaints.

This program is creating increased vigilance and awareness in previously indifferent sectors of the American importing community.

There have been reports of problems and difficulties. The Customs Service and Coast Guard are working hard to ensure that our actions remain tough, fair and judicious.

There have also been erroneous reports that we are backing off of zero tolerance. Nothing could be further from the truth. If you will read the article in the Washington Post to which everyone has referred so often in which they refer to the White House, the White House was never even questioned by the reporter who reported the article. The only individuals, as I understand, that were spoken to were Admiral Yost and myself. The White House has not changed its position. It remains tough on zero tolerance.

Mr. Chairman, during World War II, Americans on the home front made sacrifices in support of our soldiers on the front lines. We conducted a lot of activities and endured a lot of inconvenience.

We are engaged in a war today testing our will and testing our commitment to make the sacrifices necessary for victory. There is no substitute for victory. The line is drawn in the dust. Either we stand four-square against drugs and their assault on our society, or we stand with the Neville Chamberlains who say that the current cost of our war on drugs is too much for us to bear.

As a student of history, I would suggest that we pay the lesser cost now instead of paying a far greater price later.

Thank you very much.

[The prepared statement of Mr. von Raab may be found at the end of the hearing.]

Mr. HUTTO. Thank you very much, Mr. von Raab, for your statement.

We will hear from each of our witnesses before we begin our questioning. Again, it is a pleasure to welcome the Commandant of the U.S. Coast Guard, Adm. Paul Yost, who is with the subcommittee quite often, and unfortunately, on this subject of drugs often times. That is a shame, but it is an indication of what is going on in our society.

So again we welcome you, Admiral Yost, and look forward to hearing your statement.

STATEMENT OF ADMIRAL PAUL A. YOST, JR., COMMANDANT, U.S. COAST GUARD

Admiral YOST. Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you today to address the Coast Guard's efforts under the administration's zero tolerance/user prosecution initiative.

I will summarize my statement and ask that it be put into the record in its entirety.

Mr. HUTTO. Your prepared statement will appear in the record.

Admiral YOST. The Coast Guard has implemented the National Drug Policy Board's combined zero tolerance initiative in an effort to increase its enforcement presence during the course of normal Coast Guard law enforcement boardings. During our law enforcement activities, we are now taking steps to identify and take appropriate action against suspected drug users.

It is important to note the zero tolerance/user prosecution initiative is not a new concept created solely for Coast Guard interdic-

tion operations. This policy of strict enforcement was approved in March 1988 by the National Drug Policy Board. It is a program being implemented by all Federal drug enforcement agencies. Zero tolerance refers to a policy of strict enforcement of our Nation's already existing drug laws. It is not a new law.

Although zero tolerance specifically applies to all conveyances, including aircraft, vehicles and vessels, enforcing zero tolerance will not change the Coast Guard's primary emphasis on the interdiction of smugglers, or will it require any change in the normal deployment of Coast Guard ships and aircraft.

Zero tolerance means that the Coast Guard, in the course of its regular patrols, boarding and inspections, will now, within the limits of the law, seize vessels and arrest individuals when "personal use" quantities of illegal drugs are discovered. In cases where it would be unwise to tie up a Coast Guard resource in escorting the vessels to port, the suspected vessel will be seized and directed to proceed to port to report to U.S. Customs or Coast Guard authorities, who will be notified to expect the vessel's arrival for initiation of appropriate enforcement proceedings.

Vessel owner concerns over seizure of their vessels when they claim no knowledge of "personal use" quantities of drugs aboard are understandable. Having been seized by the Coast Guard, the vessels are turned over to the Customs Service, which is the Federal agency responsible for disposition of the seized property.

Customs has developed an administrative procedure by which the owner can present evidence to establish that he was an innocent party and took reasonable steps to prevent the vessel from being used in violation of the law. Further, Customs has broad discretion in these cases and can impose a range of civil penalties as dictated by the circumstances.

If the owner is successful in meeting this burden, it is Customs' policy to return the vessel. If he is unable to sustain his burden of proof, an appropriate penalty, up to forfeiture of the vessel, will be applied.

Common carriers, such as ferry boats and cruise ships are handled differently, and under different laws than pleasure craft or fishing vessels. Common carriers are generally protected from forfeiture unless there is evidence that the owner, master, or other person in charge was grossly negligent in preventing the violation, knew or could have known that drugs were aboard, or may have either facilitated or acquiesced in their presence or use.

This concludes my prepared statement. I will be happy to answer any questions, Mr. Chairman.

[The prepared statement of Admiral Yost may be found at the end of the hearing.]

Mr. HUTTO. Thank you, Admiral Yost.

Mr. Vance, I understand that you have an opening statement. You may proceed, sir.

STATEMENT OF WAYNE VANCE, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION

Mr. VANCE. Thank you, Mr. Chairman.

On behalf of Secretary Burnley, who is at an annual meeting of World Transport Ministers, I am pleased to be here today with Admiral Yost and the Commissioner to provide the committee with a perspective on Coast Guard's zero tolerance enforcement policy as one part of the department's broad-based, aggressive anti-drug program.

This Nation cannot settle for "business as usual" in combating the epidemic of drug abuse. As Secretary Burnley recently stated in Miami concerning the Coast Guard zero tolerance policy, we are under siege by the suppliers and pushers of drugs who are invading our shores, reaching into our school yards, devastating our families, killing thousands each year, and eroding national productivity. When under attack by a formidable enemy, you must use every resource at your command to fight back.

From now on, Coast Guard officers will overlook no drug infraction, no matter how small the quantity of drugs involved. Boatowners understand now that pushing off from shore does not mean pushing away from the law. By using drugs on their vessel or permitting them on board, they now risk not only full criminal prosecution, but forfeiture of their boat.

Let's face it. The millions of Americans who are hooked on drugs, many of whom have glamorized drug use, have made the United States the most lucrative market for this world's drug suppliers. Obviously, when we make it more costly and more painful for drug users, we gradually make this country less profitable and less attractive for drug smugglers.

The Coast Guard's double-barrelled attack against the supply and demand side of the drug problem is a commitment we can all be proud of. Yet our efforts do not end with zero tolerance enforcement and drug interdiction activities. DOT's efforts toward a drug-free transportation system has many aspects, which has made us one of the lead agencies in fighting the war on drugs. For instance, the Coast Guard has had a mandatory drug testing policy in place for its military personnel since 1983. The program's success in reducing drug usage is nothing short of remarkable.

You are well aware of our now annual struggle to obtain the President's requested levels of Coast Guard funding, about one-fourth of the operating expenses allocation is committed directly to drug patrols and other anti-drug activities. We seek to continue our anti-drug efforts and need your support for the expeditious approval of the pending supplemental appropriations bill that would restore about $60 million in needed Coast Guard funding for fiscal year 1988, and for the President's requested funding levels for fiscal 1989.

In order to put today's specific issues in context, it is important to note that the department's anti-drug efforts go beyond the Coast Guard. We have undertaken controversial, but critically needed, anti-drug efforts throughout the department.

We certainly don't need more tragic accidents such as the January 1987 Amtrak/Conrail crash or the more recent Metro-North collision involving five rail employees with evidence of illegal drugs in their systems in order to justify drug and alcohol testing rules. The evidence is clear. Drug and alcohol abuse is just as much of a problem among key rail personnel as it is in society-at-large.

We have also proposed random drug testing for other transportation industries, such as airlines, and we expect to issue more proposals as soon as possible. Just this past winter we discovered a case of a professional airline pilot involved in a fatal crash on approach to the Durango, Colorado Airport who had traces of cocaine in his blood at the time of the crash. Random testing is absolutely critical in our efforts to identify any users in the various transportation industries. We will be fair and responsive in our rulemakings, but the signal must be nothing less than "we mean business."

The Department of Transportation was the first civilian Federal agency to implement a mandatory drug testing under President Reagan's September 1986 Executive order on a drug-free workplace. This was a strong measure, not welcomed in all quarters, but it is justified and was upheld. The public depends on our air traffic controllers, our safety inspectors, and our other employees with safety responsibilities, just as much as it depends on a locomotive engineer or airline pilot.

Our resolve is equally great in dealing with alcohol abuse by motor carrier operators. Secretary Burnley just established a strict 0.04 blood alcohol content level for commercial vehicle operators in place of the 0.10 standard that has traditionally been in place in most jurisdictions.

I think it is very significant as we discuss drug use aboard vessels to note the Coast Guard's recent issuance of rules and enforcement against drunk boating. Moreover, today's strict enforcement against drugs on vessels is analogous to the strict enforcement against drunk driving in recent years.

As recently as 5 years ago, open containers of alcohol in an automobile, and even drinking by the driver, was tolerated by society and often ignored by law enforcement officers. The efforts to reduce drunk driving by such measures as road blocks were at first considered by many to be unreasonable or even outrageous and unconstitutional. The public's attitude about lawless drinking and driving and about strict enforcement has changed completely in recent years, however, in part due to heightened consciousness of the terrible consequences of driving while impaired.

The recent tragic church bus accident in Kentucky is just the latest in a series of tragedies to galvanize a nationwide zero tolerance approach to drunk driving. Our determination not to ignore but to prosecute every violation of our drug laws is intended to make casual or recreational drug use just as unacceptable.

Zero tolerance, as Admiral Yost emphatically stated, is not a change in the mission of the Coast Guard. Zero tolerance is the announcement and implementation of a policy that states that the Coast Guard, in performance of its mission, will not ignore, will not minimize, and will not tolerate instances of illegal drugs when they are found. It is full enforcement of the existing law in order to do all we can to eliminate a wrong attitude and an illegal presence of drugs.

It is difficult to believe that there was a time not so long ago when many thought that drugs could be used "recreationally", with no serious consequences to the abuser or the general public. Over the years we have seen that this mindset is fatally flawed. Drugs have taken an immeasurable toll on the productivity and

well-being of this society. If we allow ourselves to lapse into complacency about the drug threat, then we will be tolerating a slow, yet devastating, attack on our children, our families, our communities and on the American way of life. It is in this pivotal battle that we must have zero tolerance.

Clearly, this is no time for compromise with the enemies in this battle—the suppliers, the smugglers and, yes, the drug users. There is nothing recreational or casual about what drug abuse has done to this country. The weekend users and the schoolyard pushers are just as responsible for spreading the eroding influences of drugs in our society as are the biggest growers in South America. In order to win the battle, we must call for an unconditional surrender of not only those who profit from drugs but of all those who use them as well.

Thank you, Mr. Chairman. I will be happy to respond, with the Commandant and the Commissioner, to questions.

Mr. HUTTO. Thank you, Mr. Vance.

We will now begin our questioning, but as we do, I would remind Members that we do have two other panels and would ask that you be as brief and concise as you possibly can. I will try to abide by that also.

First off, I want to commend all of you for the strong stand that you are taking against drugs. That's absolutely necessary. We have to do it.

I think what most of us feel here today is that yes, we do have to prosecute those who are users, who have it in their possession. We have to prosecute those who are responsible for it having gotten to them. We have to prosecute the pushers and everybody concerned. But what we are talking about I think today, and I believe that most members of this subcommittee feel this, that there has to be some reasoning, and we can't punish innocent people.

Having said that, I would like to ask Mr. von Raab, and then possibly Admiral Yost may want to comment also, have there been any guidelines issued? A party fishing boat master, a commercial fishing vessel operator, any of these people, do they know what to expect? Are there guidelines?

Mr. VON RAAB. Mr. Chairman, there have been guidelines sent out to the Customs' offices who, as the Admiral indicated, are in effect the managers of the seizures that either Customs or Coast Guard bring in.

Mr. HUTTO. I understand that your people know what to do, but how about that fishing boat captain? Does he know what the consequences might be? The reasonableness of it is what we are looking for.

Mr. VON RAAB. The consequences under section 1595(a) are under the laws of the United States, that the presence of any amount of drugs on a boat is sufficient grounds for seizure, regardless of the innocence of the owner or of the individuals.

The Customs Service, fully realizing the importance of that issue, has instructed its field that when the conveyance is in the possession of a party other than the owner, it shall be seized, and if the owner then presents evidence, which clearly convinces the district director that that owner is an innocent party, the boat will be returned.

Mr. HUTTO. Well, suppose it is a sightseeing boat and you have 50 or 100 people on board, and it is discovered that one of the passengers has a small amount of marijuana? Certainly I would want that person to be prosecuted to the fullest extent of the law. But how about all of the others?

Mr. VON RAAB. In that case, that individual would be prosecuted. He would be arrested.

Mr. HUTTO. How about the boat?

Mr. VON RAAB. The boat would not be seized, because that is a common carrier that is exempt from this program. Common carriers are not covered by this program. They are subject to a different set of laws.

Mr. HUTTO. How about the fishing vessels?

Mr. VON RAAB. It depends. I would like to refer this question to Betty Anderson, our Deputy Chief Counsel just to keep us absolutely accurate.

Mr. HUTTO. Ms. Anderson, glad to have you here today.

Mr. VON RAAB. She can answer the specifics concerning fishing vessels.

Ms. ANDERSON. Yes, sir. A fishing vessel which has a steady crew on it and is not just carrying any person who is available to be carried would not be a common carrier. They would fall into the normal rules regarding any vessel having any drugs aboard. So if the drugs were on the vessel, it would be subject to seizure and forfeiture.

Mr. HUTTO. Regardless of whether or not this is a party fishing boat that takes people out and makes a living that way?

Mr. VON RAAB. Well, in some cases that could be a common carrier.

Ms. ANDERSON. If it is what is normally called a head boat, that is, anybody who wants to come get on the boat when the voyage starts and——

Mr. HUTTO. But if it is a regular crew, then it is subject to seizure; is that right?

Mr. VON RAAB. Right. Then the procedure is that the Customs Service would undertake its investigation, accept information from the owner, and determine the guilt or innocence of the owner. If the owner is determined to be innocent, the boat would be released.

Unfortunately, in many cases there are unwarranted claims of innocence. For example, we had a case that literally was a floating shooting gallery. The owner claimed to be innocent, but there was a real question of whether that owner was innocent of what was obviously an ongoing series of drug parties on his boat by the crew.

Mr. HUTTO. How long does that procedure take before you can release the vessel? In other words, I'm thinking about a fishing boat who's skipper and crew, they make their living that way. Then they are out there and——

Mr. VON RAAB. In some cases where it is obvious that the owner is innocent, we would cancel the seizure immediately. In other cases where it is less clear, we would conduct a further investigation. The owner then has an opportunity to post a cash bond, against which his boat would be released as soon as he posted that bond and submitted his petition. So there is a virtually immediate procedure available to the owners to get their boat back.

If, however, the circumstances were such that it was obvious that this was a drug running boat, or a boat in which drugs were used extensively, then we wouldn't return the boat, and we would keep it.

Mr. HUTTO. I can see where this would be a tremendous deterrent, but I believe my main question to you is, what have you done to educate the captains so that they can be aware of this? I think if the skipper of a boat knew, hey, I can lose my boat here, he is going to be very strict with his crew members and make sure that they don't have any traces of any kind of drugs whatsoever.

But I think you need to educate them. I think it is wrong to take away their livelihood for a period of time.

Mr. VON RAAB. Well, in some cases they shouldn't have their livelihood taken away, but if they were involved or knowledgeable of what was going on in their boats, they should have their livelihood taken away, without question. There can be no exemptions under those circumstances.

However, there has been a lot of press about this, which has made everyone aware that we are seizing these boats. The Coast Guard and the Customs Service are working up joint guidelines, if you will, to go out warning——

Mr. HUTTO. Well, I think that's what——

Mr. VON RAAB. We are doing that.

Mr. HUTTO. When will they be available?

Mr. VON RAAB. I would say within a few days.

Mr. HUTTO. Admiral Yost.

Admiral YOST. I would add to that, we plan to have that combined fact sheet, Customs and Department of Transportation fact sheet out to all the boating, fishing and marine media within a week. We will distribute that fact sheet to all of our Coast Guard Auxiliary boating safety class instructors, and it will be made part of the classes. We will distribute that fact sheet to all Coast Guard Auxiliary courtesy motor boat examiners for this boating season. We will distribute that fact sheet to all Coast Guard units. We will continue to conduct interviews to educate the boating public. I did editorial boards yesterday in one of the major cities of this country, and two of the major newspapers in this country on this subject and before TV. We will encourage commercial vessel safety boardings to include a discussion of zero tolerance. Our boarding officers will have that discussion when they board. We will distribute the interview that Secretary Burnley had with NBC. We will distribute that transcript to all of our public information offices throughout the Coast Guard to be used in speeches by our district commanders, by our chiefs of operations.

We are going on a full-court press to educate the public on how they can protect themselves, how the boat owner, the charter operator, and particularly the fishing boat operator can protect himself from seizures of his livelihood. So we are going to do that, and we are on the verge—we are within a day or 2 or 3 of moving that out, sir.

Mr. HUTTO. I think, Admiral Yost, they don't know what is expected of them. I think that they need to have that information soon. Thank you.

Mr. Davis.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. von Raab, I represent a district that borders Canada, Sault Ste. Marie, Ontario, Sault Ste. Marie, MI. We have apparently had a number of seizures of automobiles coming across from Canada, and there are of course always some cases where you have the driver of the automobile and he has a passenger. In one of these cases they have contacted my office. A young person had a passenger who had a half of a cigarette or a joint, whatever you call them, in his possession, and they confiscated his automobile. What is the procedure there? What happens? Give me the whole scenario, please, what is going to happen?

Mr. VON RAAB. That car would be seized.

Mr. DAVIS. It was seized.

Mr. VON RAAB. Yes.

Mr. DAVIS. I know it was. The question is—it was seized. Now the owner of the automobile is claiming he wasn't aware that his young passenger had this half a joint, now what happens there? What is the procedure?

Mr. VON RAAB. The administrative forfeiture proceeding would begin. The owner would have an opportunity to petition to have his car back.

Mr. DAVIS. What does that mean? Give it to me in everyday language. I want to know how we can get the car back. If I could prove that I didn't know anything about the——

Mr. VON RAAB. It is quite possible you may not get the car back.

Mr. DAVIS. You mean if this young man has no knowledge that the passenger in his car has half a joint, no knowledge whatsoever, that you have confiscated his car, and he is never going to get the car back?

Ms. ANDERSON. What could happen, sir, is this. Customs Service would start an immediate administrative forfeiture proceeding. That means we would just begin to forfeit the car. At the same time, the person who owned the car could petition to get the car back. Now in the case of a person who had possession of his car when the drugs were found in the car, he will be petitioning for the right to the return of the proceeds of the car when this car is sold after forfeiture, not for the car itself.

However, if he is unhappy with that result, that kind of petitioning, he can immediately take us into court and fight the forfeiture and say don't forfeit my car.

Mr. DAVIS. That sounds like one hell of a complicated policy for a young man who—you know, I'm assuming he is innocent. He did not know that this person had half a joint. That seems totally unfair in this case, if in fact he did not know.

You are outlining a policy that is going to take him a long time to get his automobile back, and is going to cost him a lot of money to hire an attorney to do it. Incidentally, he is still making payments on the car. How long is this going to take? You haven't really described to me this procedure. How long is it going to take him to go through all of this?

Mr. VON RAAB. The administrative procedure takes about a month. If he wants to take us to court, it will take a longer time.

Mr. DAVIS. Do you really think that that policy makes sense? How does seizing that automobile, assuming he is an innocent

owner, do anything to advance the concept of holding the user accountable?

Mr. VON RAAB. If this individual is able to convince the Customs Service that he believed or was certain that the individual was not carrying drugs, we would view the seizure as an innocent party. But if this is just an individual who is transporting someone who ends up with drugs, then he is going to have his car seized. It's as simple as that.

Mr. DAVIS. You immediately seize the car.

Mr. VON RAAB. We don't seize the car. The car is seized as a matter of law as soon as drugs are found. It doesn't even take an action of the Customs Service. The law operates immediately to seize the car for the Government.

The issue there is whether the Customs Service will cancel the seizure or subsequently return the car that has been seized.

Mr. DAVIS. But then you very likely could have a very innocent party losing the possession of his or her automobile for a lengthy period of time. That part does not seem to be fair.

Mr. VON RAAB. The issue there is "very innocent". There is the question. The purpose of the process is to determine the level of innocence of this party. A number of boats have been given back under similar circumstances. If the Customs Service is convinced that the crews have been tested for drugs, that the owner has a practice of trying to ensure that drugs are not used on his boat, then the boats would be returned.

If, however, this individual has not taken any precautions to ensure that people in his car or on his boat haven't been questioned or talked to about drugs, then that individual will lose his car or his boat, whichever may be the case. That's the policy.

Mr. MILLER. Will the gentleman yield?

Mr. DAVIS. I probably better not yield because we will get into——

Mr. HUTTO. We are short on time unfortunately.

Mr. DAVIS. We are short on time. So I will pass and come back later.

Mr. HUTTO. Thank you, Mr. Davis.

The gentleman from Massachusetts.

Mr. STUDDS. The gentleman from Michigan obviously is not an attorney and does not understand the American system, at whose core lies the proposition of "guilty until proven innocent." I think we need to dwell on that.

Gentlemen, let me see if I can get at the logic, if I may use that term in this context, if what lies behind this policy. Admiral Yost, you announced, and the press treated it with some fanfare, it was on the front page of a number of major papers a few days ago, there was a major change in this policy.

What that boils down to, as I understand it, is you no longer seize for personal possession amounts beyond 12 miles, right? That's the sum and substance of the change?

Admiral YOST. That was a change in our procedure. I didn't announce a change in our policy.

Mr. STUDDS. I don't know who announced it, but it made big news.

Now, as I understand it, and tell me if I'm wrong, and anybody can answer the question, the reason you are no longer seizing beyond 12 miles is that some of your lawyers put their heads together, concluded you didn't have the statutory authority to do that; is that correct?

Admiral YOST. Well, I have the Transportation general counsel beside me. I would hesitate to answer that.

Mr. STUDDS. Well, since you began seizing them in international waters and then a few weeks later stopped, I infer that some of your attorneys somewhere told you that you probably didn't have the statutory authority to do that. Was that essentially the case?

Mr. VANCE. Let me, if I may, address that because I was involved in that process.

Mr. STUDDS. Briefly, if you would.

Mr. VANCE. I will try to be brief, but I do need to explain the process. There is, I believe, authority that can be argued and well argued for seizure on the high seas for small amounts.

Mr. STUDDS. But it is uncertain; is that correct?

Mr. VANCE. It is, as we researched and continue to research, we had some difficulty. We looked at the case law. There is good case law for seizure on the high seas——

Mr. STUDDS. I have no argument with your conclusion. I don't want to argue the law with you.

Mr. VANCE. There is the Supreme Court guidance——

Mr. STUDDS. Gotcha. So it is a gray area, is that a fair statement, under the law?

Mr. VANCE. It is an area that we thought in the better parts of discretion that we would not press, but work under the limits——

Mr. STUDDS. Fair enough. I understand that. Now my next question is, since you began acting as if you had the clear authority to do that, then concluded that it was arguable, and a gray area, and it would be the better part of wisdom not to do it, I assume that it is logical for us to infer that you wish you did have that authority, you would just be pleased as punch if we gave it to you. Because I can't see any logical distinction between seizing a vessel because one of its crew members has one-tenth of an ounce of marijuana on his person 12½ miles at sea, on the one hand, or 11½ miles on the other. Is there any logical, as opposed to legal, distinction there in anybody's mind?

Mr. VANCE. Well, if I can respond, there is a legal difference between 12 miles out and 12 miles in——

Mr. STUDDS. I understand that. That wasn't my question. Is there a logical difference?

Mr. VANCE. We can only do what can be done within the law outside the 12 miles.

Mr. STUDDS. Wait a minute. Listen please, sir. That is not my question. I granted you that in my statement. I know there is a legal difference. Is there a logical difference between seizing someone 12½ and someone 11½ miles from shore. If the law permitted it, I assume there is no logical difference. Logically you would seize someone one place or the other, wouldn't you?

Mr. VON RAAB. There is a logical difference, and that is, in the case of the 12-mile limit you have penetration of the border.

Mr. STUDDS. We are talking about a fishing vessel in this case who lives within the border. They are going to penetrate or repenetrate all the time.

Mr. VON RAAB. We are talking about his crossing the border of the United States. Whether he lives within the border or not is not the issue.

Mr. STUDDS. Wait a minute. This question is not meant to be an argumentative one. I am just trying to get at your own thinking. I am assuming——

Mr. VON RAAB. I just told you my thinking, and that is that you are crossing the border at the 12-mile limit. Outside the 12-mile limit you are not.

Mr. STUDDS. Well, then, why did you begin enforcing it outside?

Mr. VON RAAB. We still have power to enforce trafficking outside the 12-mile limit.

Mr. STUDDS. Wherein lies the logic—well, never mind. You are not going to make any sense on that one obviously.

You started seizing vessels on the high seas, including one very famous case for one-tenth of an ounce. Later you announced that you weren't going to do that any more because the statutory authority was somewhat less than clear. My only purpose in asking this particular question was, I assumed the logic of your case is, whether one agrees with it or not, that if you are going to go after people who have small amounts, and it is a fishing vessel based in Los Angeles or Boston or Miami or wherever, it doesn't make a lot of difference whether she is on her way home or on her way out or fishing, she is 10 miles out, 11 miles out, 13 miles out, it is the same situation.

What about the *Queen Elizabeth*? When are we going to see a Coast Guard vessel towing her into port?

Mr. VON RAAB. The *Queen Elizabeth* is a common carrier which is exempt from that.

Mr. STUDDS. I understand that. That's my next question. The common carrier is exempted from your policy not because you decided it ought to be, but because the statute clearly upon which you base this policy exempts it; right?

Mr. VON RAAB. Absolutely right. Our policy is based upon the statute.

Mr. STUDDS. So my question is, would it not make more sense if we amended that statute so that you could go after common carriers?

Mr. VON RAAB. No.

Mr. STUDDS. Why not?

Mr. VON RAAB. Because the common carrier is a different type of vessel, in which the owner does not have the kind of control over the parties on it that he would gave on a boat which is privately held.

Mr. STUDDS. So the same thing is true for say a 747, right?

Mr. VON RAAB. That's correct.

Mr. STUDDS. How about a NOAA vessel? Let me say to you that when we first heard that you had in your imaginative new policy seized the world's premier oceanographic research vessel, the *Atlantis II* from Woods Hole, the first information we had, which turned out to be incorrect, was that it was a NOAA vessel, many of

which were based also at Woods Hole. When may we expect to see the Coast Guard towing in a NOAA research vessel?

Mr. VON RAAB. The *Atlantis II* was inspected at a dock. Marijuana and paraphernalia were found——6

Mr. STUDDS. I know what happened. That's not my question.

Mr. VON RAAB. It was never towed in. It was never taken out of service.

Mr. STUDDS. That's not my question.

Mr. VON RAAB. Well, it's an important distinction that it never was taken out of service.

Mr. STUDDS. We don't have much time. I'm trying to get some questions in, and I'm not trying to be sneaky here. The *Atlantis II* 8 or 9 days ago was constructively seized.

Mr. VON RAAB. It is still under constructive seizure.

Mr. STUDDS. I understand that. Would you let me ask the question please? When may we expect to see the Coast Guard or the Customs Service constructively seize a NOAA research vessel?

Mr. VON RAAB. We do not seize Government vessels.

Mr. STUDDS. Why not?

Mr. VON RAAB. The U.S. Government already owns them. The purpose of seizing a vessel is to take it into your ownership.

Mr. STUDDS. I thought the purpose of seizing a vessel was to send a message to the owner of the vessel. Isn't that what you just told us?

Mr. VON RAAB. The owner in that case is the U.S. Government. We are talking. We are delivering the message. If we haven't heard our own message by now, we are deaf.

Mr. STUDDS. What happens when you find a one-tenth of an ounce of marijuana on a crew member on an aircraft carrier?

Mr. VON RAAB. On an aircraft carrier it is the same thing. I assume that the Air Force or the Navy, depending on who he reports to, will prosecute that individual.

Mr. STUDDS. Let me ask you this.

Mr. VANCE. Let me add, I don't think we can overlook the constant drug testing that the military services perform.

Mr. STUDDS. I understand. I am really trying to get at something here, and I don't have much time. The statutes upon which you base your authority—and I'm not arguing your lawful authority, I'm trying to raise questions about your commonsense and the discretion with which the authority is exercised—the statutes upon which they are based focus on vessels as conveyances, as potential means for the importation of controlled substances clearly.

Mr. VON RAAB. Yes.

Mr. STUDDS. But in the case of a commercial fishing vessel, those are not conveyances in that sense unless the vessel is engaged in trafficking. But if you seize a commercial fishing vessel, as you have done on dozens of occasions in the last few weeks and months of this policy, because there is a fraction of a trace amount of marijuana on the person of one member, you are not seizing a conveyance in the sense in which the statute speaks to, you are seizing a workplace based on an inspection thereof.

My question to you is, is there any logical, not statutory, but is there any logical difference between the Coast Guard or the Customs Service seizing a fishing vessel on which 30 men make their

living, literally seizing it, and making it impossible for an indefinite period of time for them to continue to make their living, is there any difference logically between that and an OSHA inspector in a General Motors plant who finds one-tenth of an ounce of marijuana on one worker, seizing that plant and holding it indefinitely. What is the difference? They are both workplaces in which one person has been found to be in possession of a trace amount of a controlled substance. If one should be seized, never mind the existing statutory authority, perhaps we should give it to you, but if logically one should be seized, why should not the other?

Mr. VON RAAB. It depends on the use to which it is being put. If it is a floating shooting gallery——

Mr. STUDDS. What do you think it's being put to?

Mr. VON RAAB. You can be certain we will seize it. I can assure you, if the workplace were nothing but a sham for what is a big pot party, I am——

Mr. STUDDS. I am not talking about that. I am talking precisely about a fishing vessel in which you have many instances where you have one member of the crew with a trace amount of marijuana on the one hand and a General Motors manufacturing plant where you have one worker on the line with a similar trace amount of marijuana. What's the difference?

Mr. VON RAAB. The difference is that one is crossing the borders of the United States, which is a very special part of the United States. It is the front line of defense against the importation of controlled substances. It's a big difference between a plant somewhere in Detroit and the borders of the United States.

Mr. STUDDS. Let me just say, Mr. Chairman, and I know I've used up more than my time, and I won't even try to get into the rest of my questions. I was tempted to ask you, you talked about alcohol, you talked about the American public not seeming to understand that you can't have a recreational use of controlled substances. If I had more time, I'd ask you about alcohol and tobacco, both of which result in many more deaths per year than the substances about which we are talking and the rationality here.

I would say to you that yesterday we tried, the administration, and failed to drop the indictment against General Noriega. You are still holding the Woods Hole Oceanographic Institution's research vessel. Constructively she is seized, and it is costing thousands of dollars in attorney's fees.

Mr. Chairman, the Coast Guard and Customs Service have limited resources, thanks in large part to the efforts of this administration to reduce their budget in the first term every single year, as you well know. All I can say is, as one of the strongest supporters of the Coast Guard in this Congress, if you can't find something better to do with your limited resources than this kind of lunacy, and this kind of absolutely irrational misuse of terribly scarce resources in a very important struggle, then maybe the administration was right in those first 6 years, and maybe you do have too much. I find that a very sad thing to say.

Mr. HUTTO. Mr. Young.

Mr. YOUNG. Admiral, welcome to the committee. How many fishing vessels has the Coast Guard seized in Alaska?

Admiral YOST. We have seized—thank you for the welcome. We have seized 44 vessels. Of those 44, I'm searching across to see how many were fishing vessels. I'm not sure I have them broken out.

Mr. YOUNG. I do. It is 10.

Admiral YOST. Nineteen are fishing vessels.

Mr. YOUNG. That's nine more than I had yesterday. How many criminal charges have been filed with those vessels?

Admiral YOST. Of the 44 vessels, 13 have already been released. I don't know how that breaks down between fishing vessels and otherwise. Five of the vessels have been fined. So that gets us up to—13 have been released, five have been fined—that's 19. One vessel has been forfeited, that's 20. The remainder of the vessels, the disposition is pending. The cases are so new they haven't sorted themselves out yet.

Mr. YOUNG. How many criminal charges have been filed?

Admiral YOST. I don't know that I can answer that. Five people have been fined, and two have—the disposition is pending.

Mr. YOUNG. My information, Admiral, is there has been one criminal charge filed and there were ten fishing boats seized out of the 44.

Admiral YOST. That sounds about right.

Mr. YOUNG. Commissioner, what is the average time for the Customs Service to complete a full administrative procedure once the vessel has been seized?

Ms. ANDERSON. Sir, they have 30 days after they get notice of the seizure to file a petition.

Mr. YOUNG. Again, I'm a little disturbed, young lady. You had better know your business better. What is the average time it is taking now to process this total problem for one vessel?

Mr. VON RAAB. The average time is a little difficult. Most of the seizures—by the way, we made 1,500 seizures under this new policy since the middle of March.

Mr. YOUNG. Commissioner——

Mr. VON RAAB. Ninety percent of them are not even contested.

Mr. YOUNG. Commissioner, wait a minute. In the first place, I'm not terribly worried about anything but my fishing vessels right now. I am not a hostile questioner. I happen to think we have to address this issue as a war. We also, again, as the gentleman from Massachusetts said, have to use some commonsense.

What I am seeking, I'll lead up to my last questions, we are seeking a solution to a problem. You cannot alienate yourself or this Congress by your actions. You have to have some wisdom as well as the law because the law is only as good as the wisdom conveys it. So I want to know what the average time is, or do you have any average ability now to make that prediction?

Mr. VON RAAB. If I may, there are a number of options available to the owner. The first option available to the owner is to post a bond, in which case his boat is released immediately. So we will leave that out.

The second option the owner has is to file a petition. If he files a petition immediately, then the Customs Service would probably take between 2 and 4 weeks to complete its investigation of the accuracy of the statements he made in that petition.

Mr. YOUNG. Now, this is what I am leading up to. Does the Customs Service take into account possible adverse economic impact upon innocent citizens, crew members, and owners of vessels during this administrative appeal?

Mr. VON RAAB. We would take that into consideration in trying to conduct our investigation as quickly as possible under those circumstances, yes, sir.

Mr. YOUNG. What I am seeking again, is it the current Customs practice of requiring Customs headquarters in Washington to process any vessels worth over $100,000 required by statute or is it some regulations at Customs? Will it require a full APA notice and comment procedure to change it, or is it simply an agency practice?

Mr. VON RAAB. That is a Treasury practice.

Mr. YOUNG. We have Customs, Transportation, Coast Guard and Treasury.

Mr. VON RAAB. Customs is part of the Treasury Department. I'm not trying to duck the issue.

Mr. YOUNG. What I am seeking here is, I have had, of the ten vessels, Admiral, we have one now, the F/V Little Bear, it is in Dutch Harbor. It was actually boarded the 19th. It was told to report back to the dock the 22d. It is still sitting there. They have lost $150,000. The captain had informed his crew, and in fact lectured the crew, told them what the policy was. One person had one joint, by the way, an ex-Coast Guard official. That one person has not only deprived the owner of that vessel, and now because that vessel is worth more than $100,000, the decision has to be made in Washington, DC.

The last part of my question is, why can't—you have already seen the vessel. The vessel is not going to disappear. You know who the captain is. I happen to believe the captain is totally innocent in this case. Why could you not proceed with the process and let him fish? The season is about over. How can you reimburse that vessel owner for the $150,000?

I know this owner, and he has not come crying to me, but he feels terribly, not only frustrated, but disillusioned with the American Government right now.

I again go back to the law and the logic.

Mr. VON RAAB. A quick answer is that the decision on that boat will be made tomorrow.

Mr. YOUNG. I'm glad to hear that. I'll take credit for it. Go ahead.

Mr. VON RAAB. Secondly, I would point out that this boat was littered with drug paraphernalia, several wooden pipes, several metal pipes, plastic pipes——

Mr. YOUNG. Commissioner, wait a minute. I dispute that. We will find out later because in fact it took them—they had passed one full inspection, Admiral, one full inspection by the Coast Guard, and then they got a report by Customs to do it again.

Now it can't be littered. Now, I know my Coast Guard people. They do a better job than that. That, my friend, is not necessarily true. Did that come from the Coast Guard or Customs?

Mr. VON RAAB. This is the list from the Customs, evidence seized from the *F.V. Little Bear* on the 18th of May, which is signed—ac-

tually, sorry, it is the Coast Guard report. I would be happy to submit this for the record.

Mr. YOUNG. I've seen both of them.

Mr. VON RAAB. Would you like me to submit this for the record?

Mr. YOUNG. Yes, I would gladly see it for the record.

[The material referred to follows:]

Rec. 7/-11 -gm

:DENCE SEIZED FROM F/V LITTLE BEAR
18 MAY 1988

TAG	ITEM
91401	Plastic Bag w/ residue and paraphernalia ✓, ~~17 gm MJ~~ 17 grams Mj. total
91402	Baggie 10.5 g MJ - Helman
91404	Wooden Pipe ✓
91405	Metal Pipe ✓
91406	Plastic Pipe w/ residue ✓
91408	Wooden Ash Tray w/ residue ✓
91409	35mm Film Can ✓ - 5 gr. MJ TP - Helman
91416	Blue Plastic Bong w/ residue ✓
91417	13 pkgs Zig-Zag paper, 2 pipes, 4 scissors, 1 glass jar ✓
91418	3 pkgs Zig-Zag paper ✓
91419	Syringe w/ needle (Note: sterile plastic needle sheath added by ship's Corpsman for safety considerations) ✓
91420	Wooden Pipe ✓
91421	3 Wooden Pipes, 2 Bags small metal filters, 1 small metal bowl, 1 pipe piece, 1 box rolling paper, 1 long metal pipe ✓
91422	Tupperware Container w/ residue ✓
91431	Rolling Machine ✓
91432	Black Plastic Case .09 MJ
91433	Carved Wood Pipe ✓
91434	12 blocks wood, 1 blue rag ✓
91435	2 bxs rolling papers, metal pipe, residue
91436	Roach Clip ✓
91437	Scissors ✓

J. B. Morris
J. B. MORRIS, CDR, USCG

J. M. Fitzgerald ens.
J. M. FITZGERALD, ENS, USCG

...e & true copy.

.7
10.5
5
.09
16.29 gm MJ. Total.

Mr. YOUNG. Now may I ask you a question. Why can't you—it is a fishing vessel, you know it is not going to go anywhere—why can't you let him go forth and the one individual who is involved in this case, why can't you prosecute him, and if you find the vessel owner guilty, come back to him later on?

Mr. VON RAAB. First of all, the individual was arrested. If they had asked us, we would have released the boat on a cash bond. Apparently they didn't make that request.

Mr. YOUNG. Can I ask a question? Has Customs ever admitted they are wrong?

Mr. VON RAAB. Yes, sir. We do every day.

Mr. YOUNG. You do?

Mr. VON RAAB. In this case we were not wrong.

Mr. YOUNG. We will talk about that later.

Admiral, do you have anything to comment on this?

Admiral YOST. Well, with some fear and trepidation I would say that my message from the Coast Guard cutter *Midget,* and I think you know, Congressman Young, the *Midget* very well. She is well commanded, a large vessel with a lot of leadership. Her commanding officer reports to me various paraphernalia and residue confiscated. Total amount of marijuana only a half an ounce, but located pipes, bongs, rolling papers, roach clips, residue laden ashtrays, storage canisters——

Mr. YOUNG. Time out.

Admiral YOST. A hypodermic needle, a rolling machine——

Mr. YOUNG. Time out. Time out. I own a rolling machine, and I don't smoke marijuana. Does that make me guilty?

Admiral YOST. How about the——

Mr. YOUNG. The seven blocks of wood, Admiral, were for carving. In fact, one of the people on board is a professional carver. By the way, fishing, you don't fish all the time. Cigarette papers—my dad used cigarette papers until he died. Now if you are using that as paraphernalia for drug use, that's nonsense.

Now I am one who wants to fight this drug thing. I have lost two nephews to drugs. I know what you are talking about. But again, logic and law have to apply together. If you call that paraphernalia, don't come to my office. I have wood carvings in my office.

Admiral YOST. I said I did this with some trepidation, sir.

Mr. YOUNG. Thank you, my good Admiral. The Customs right here are the ones that are guilty, if anybody, of not using logic with the law. This vessel has lost a tremendous amount of money on one small joint.

Mr. VON RAAB. This is the amount of marijuana that was found on that boat.

Mr. YOUNG. How much is that?

Mr. VON RAAB. Seventeen grams of marijuana.

Mr. YOUNG. You will verify that it came from the boat?

Mr. VON RAAB. You can make a lot of joints out of this. The other paraphernalia they found was not used for wood carving. They were specifically designed for smoking dope. You don't have little plastic pipes this big for smoking tobacco.

Mr. YOUNG. Do you have the pipes with you?

Mr. VON RAAB. I don't, but we can certainly deliver them to this committee.

Mr. YOUNG. I would like to see the pipes, and I would like to verify they came from the vessel. I want to remind you, Commissioner, you are not helping the cause here at all. You are not helping the cause. In fact, you are hurting it.

Now you can do what you want to do for those TV cameras, but you go after the purveyors of dope and the sellers of dope, and those that are killing our kids. You remind me of World War II and some of the actions that we had in World War II that we are now forgiving on the floor of Congress. We put innocent people into prison camps, innocent people, because they had a heritage and yet they were Americans.

Mr. HUTTO. Thank you, Mr. Young.

Mr. YOUNG. I want to compliment the Coast Guard in their actions.

Mr. HUTTO. Mr. Carper.

Mr. CARPER. Thank you, Mr. Chairman.

I think what I hear weave through the thread of the questions here today is just a yearning to find out what makes sense, what is logical, what is rational with regards to the sensible allocation of scarce resources that the Coast Guard possesses.

Last month we had a fiery debate in these halls and over on the House floor on whether or not relatively scarce assets of the Coast Guard should be deployed to the Persian Gulf to help an effort there to assist a 600-ship Navy to perform its duties. This week we are talking about whether or not it makes sense to use those same scarce Coast Guard assets to haul in a fishing boat or other boat that has minute quantities of an illegal drug, while at the same time the big fish, too many of the big fish, are getting away.

I recall several years ago in a hearing not unlike this one talking with your predecessor, Commandant Gracey, and asking him, of the major drug runners that are trying to get their quantities of drugs, their shipment of drugs into this country, how many get through, how many do we stop. He ventured that perhaps of every three that were endeavoring to get into this country with their drugs, we stop one, and two get through.

If those numbers are even close to being in the real world, what sense does it make to use your relatively scarce assets to haul in a boat, a fishing boat or other small vessels, with minute quantities of drugs while the big fish simply swim away?

Admiral YOST. Mr. Carper, you weren't here when I made my opening statement. Let me say unequivocally that I am not and do not intend to use my scarce resources in towing in or escorting in vessels with minute quantities of drugs if my vessels should stay out on patrol. We will seize that vessel, send it in, and have it report to the collector of customs or to the Coast Guard group commander without Coast Guard escort. We will not waste our resources.

We are boarding for one reason, one reason only, and that is to find major quantities of drugs. If in the looking for major quantities of drugs we find obvious amounts for personal use, we will no longer ignore it. That is the only change in this policy. We are just not going to ignore what we use to ignore unless this Congress tells me, "Admiral Yost, it is the feeling of Congress we want you to go back to the old policy which was ignoring personal use quantities."

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I am going to be so responsive, particularly when one of my strongest supporters says, "Admiral, I am going to cut your budget."

I am listening very hard. I am looking for direction. Mohammed has come to the mountain. But I am not wasting resources in this policy, and I commit that to you, sir.

Mr. CARPER. In terms of the search, the amount of time that would be spent on a vessel looking for large quantities of drugs, and the kind of search it is going to take to uncover one-tenth of an ounce of an illegal drug, are we finding that the one-tenth of an ounce just happens to be laying out in the open and the crew stumbles across it? Are we ransacking through a vessel to uncover those——

Admiral YOST. We did put out guidelines to my people. Some may have been too zealous in carrying out the policy before we sent them the guidelines. Looking back, I should have put out the guidelines in the beginning. Those new guidelines say, in the course of your business, if you find probable cause, that is, a purse lying open with marijuana spilling out of it, you could look. But don't look in the purse if it is closed unless you have probable cause. Don't go through the wastepaper basket, because there won't be tons of marijuana in the wastepaper basket. Don't look in the ashtray because there won't be kilos of cocaine in the ashtray. But if you have probable cause in looking for the greater quantities, don't ignore it any longer. That's the only change in the policy, sir.

Mr. CARPER. When you confiscate a vessel on the high seas, if the vessel is seized, ultimately sold, what happens to the value of that vessel? What happens to the money that might be gained?

Admiral YOST. Let me ask the Commissioner of Customs to talk about that. We turn those vessels over.

Mr. VON RAAB. The moneys first go into a forfeiture fund that has been provided by Congress for the Customs Service with a total allowable amount of $18 million a year. Those moneys are available to Customs to outfit its boats against drug smugglers, to pay witnesses for information, et cetera. Anything over that amount goes directly into the general revenues.

Mr. CARPER. But the value of the seizures accrues to the Customs?

Mr. VON RAAB. Initially, only up to $18 million. After that, and we are talking hundreds of millions of dollars of seizures in any year, after that $18 million it goes into the general revenues just as would anyone's income taxes.

Mr. CARPER. Does any of the value of the goods that are seized, does any of that accrue to the Coast Guard?

Mr. VON RAAB. No.

Mr. CARPER. Should it?

Mr. VON RAAB. Only the expenses of the seizures, such as the cost of storing, other expenses are deducted from the value of the seizure before the amount is credited against the $18 million, as well as the Coast Guard's expenses.

Mr. HUTTO. I'm sorry we have to cut you short, but we are on a strict time limit. But on that point, Commissioner von Raab, the Coast Guard does not receive their expenses, only a very small percentage.

Mr. VON RAAB. That's possible.

Mr. HUTTO. Nothing since 1986.

Mr. VON RAAB. The expenses are strictly defined in the law. Unlike the Justice Department which has an open-ended forfeiture fund, we have a limited fund of $18 million. But you are probably correct. The way expenses are defined may result in a small amount getting back to the Coast Guard.

Mr. HUTTO. There hasn't been any since 1986.

I would like to ask the Members, if they will, to be as brief as possible. We will have the opportunity to submit questions that you might want to for the record.

Mr. Bateman.

Mr. BATEMAN. Thank you, Mr. Chairman.

A vessel seized, the owner can get it back immediately upon posting of a bond?

Mr. VON RAAB. That's correct, unless the Customs Service feels that there is a danger.

Mr. BATEMAN. Absent some unusual circumstance, he can get it back by posting a bond?

Mr. VON RAAB. That's absolutely correct, yes.

Mr. BATEMAN. Can you tell me what the availability and cost of such bonds are?

Mr. VON RAAB. Well, there are lots of brokers for these bonds. What charge they make for these bonds, I am terribly sorry, I don't have that. I can get it for you for the record.

Mr. BATEMAN. I would like for you to do that, Commissioner, because we cannot take this in a vacuum. You are going to seize vessels that deserve to be seized under this policy, but you also possibly on your own findings are going to find instances where after the fact a lawful seizure is not a wise implementation of public policy.

Mr. VON RAAB. That's correct.

Mr. BATEMAN. We need to know the practical context in which that potentially very, very innocent owner is dealing if his boat has been seized and it was not a wise or discreet thing when it is thoroughly investigated for it to have happened. So I want to know about the availability and cost of bonds.

Mr. VON RAAB. We will provide that for the record.

[The material referred to follows:]

INNOCENT OWNER PETITION FOR RETURN OF A CONVEYANCE

(Mr. VON RAAB. Mr. Chairman, I have been advised by staff that my earlier remarks were not entirely correct.)

An owner who believes himself to be innocent may petition Customs for return of a conveyance which has been lawfully seized. If it appears early in the petitioning process highly likely that the owner will be able to substantiate his claim of innocence, he may elect to accept early release of the seized conveyance pending a final decision on the petition. In this case, he will be required to deposit a letter of credit or cash, to cover seizure expenses. If it is finally determined that he was, in fact, innocent, a portion of the letter of credit or cash will be returned if it exceeds seizure expenses. On the other hand, if Customs retains custody of a lawfully seized conveyance while a petition is pending, the conveyance will be returned after review of the petition if it is determined that the owner was an innocent party. Since the seizure in either of the above situations was a lawful one, an innocent owner will be required to pay seizure expenses.

Since you did ask about the cost of bonds, I'll be happy to provide that information.

COST OF BONDS

SINGLE TRANSACTION

Single transaction—minimum $20.00 premium.
$5.00 per thousand for the first $50,000.00 of coverage.
$2.50 per thousand for $50,001.00 to $100,000.00 of coverage.
$1.25 per thousand on amount over $100,000.00 of coverage.

CONTINUOUS

Continuous transaction—minimum $200.00 premium.
$10.00 per thousand for the first $50,000.00 of coverage.
$5.00 per thousand for $50,001.00 to $100,000.00 of coverage.
$2.50 per thousand for excess over $100,000.00 of coverage.

SURETY ASSOCIATION OF AMERICA

SINGLE TRANSACTION

$5.00 per thousand for the first $50,000.00 of coverage.
$2.50 per thousand for the $50,001.00 to $100,000.00 of coverage.
$1.25 per thousand on amount over $100,000.00 of coverage.

CONTINUOUS

$10.00 per thousand for the first $50,000.00 of coverage.
$5.00 per thousand for $50,001.00 to $100,000.00 of coverage.
$2.50 per thousand for excess over $100,000.00 of coverage.

Mr. BATEMAN. I want also, if you don't have any program along these lines at this point, I want to know what you can tell boat or vessel owners they can do in order to insulate themselves from a risk of a seizure and the cost and the inconvenience involved here if they have done certain things. As, for instance, if a vessel owner requires drug testing of his crews, if he does certain other things that he can demonstrate he has done, can he protect himself from the kind of cost and risks that are of concern to us today?

Mr. VON RAAB. The Coast Guard and the Customs Service have prepared an informational letter along those lines which will be distributed. I believe the admiral has described the distribution the Coast Guard is going to make of it. We will make a similar distribution within the week.

[Letter may be found at end of hearing.]

Mr. BATEMAN. My particular focus is whether or not it covers what the vessel owner can do——

Mr. VON RAAB. It does.

Mr. BATEMAN. By way of positive programs which would insulate him from a risk of a forfeiture and the considerable expense and inconvenience involved.

Mr. VON RAAB. There is quite a lengthy discussion of that.

Mr. BATEMAN. I would like to have a copy of that.

Mr. Chairman, I don't want to take an undue amount of time, though I have a number of other questions. I'll suspend and reserve the right to pose further questions for the record.

Mr. HUTTO. Thank you, Mr. Bateman. Without objection, that will be done.

Mr. Pickett.

Mr. PICKETT. Thank you, Mr. Chairman.

Admiral Yost, does the Coast Guard have a program called constructive seizure of vessels?

Admiral YOST. We have used that term. What we mean by it, in using that term, is that if we have a ship on patrol and come across a vessel who is in violation of the law and therefore subject to seizure, and we don't want to bring our vessel in from patrol, we will direct the master to proceed directly to a particular port, report to the district commander or the collector of customs without having been escorted. Now we have done that with Russian fishing vessels in the Bering Sea and directed them to come in.

Sometimes we put one man, a prize crew, or supercargo on the vessel, but normally we just direct it to report.

Mr. PICKETT. In the case of the fishing vessels that have been referred to here today, isn't it possible to use this principle of a constructive seizure to allow these vessels to continue in their line of work until such time as a determination is made whether there has been a violation of the law?

Admiral YOST. I would like to have the general counsel of the Department of Transportation discuss that, sir.

Mr. VANCE. Let me, if I may, give you some background on that because we have wrestled with that question of constructive——

Mr. PICKETT. If you can be as brief as possible, please.

Mr. VANCE. I will try to be very, very quick. We have looked at—obviously there is a problem of inconvenience, there is a problem with cost—how do you address those things. We looked at the idea of constructive seizure, we looked at the idea of exemptions, we looked at various kinds of procedures that the Coast Guard might use when it is at sea and finds those vessels. Pretty soon we found ourselves full of exemptions, full of convenience, full of variations, and with no zero drug tolerance program. The waivers, the exceptions began to outrun the program.

What we came up with was an absolute even application of a law, of a guideline, to have a clear line—and those are the guidelines that I think have been distributed to you. If you are outside that 12-mile limit, for instance, it is going to take a pretty substantial finding, not necessarily a substantial amount, but in the circumstances a substantial finding of drug possession aboard. I think that the case of an insubstantial amount would be one that probably would not have in any case justified a constructive seizure.

If you are within the 12 miles, then possession alone is all that it takes, but a trip in and back from 12 miles if you are immediately released can be, indeed, a very short trip.

Mr. PICKETT. Is there any reason, Admiral, why this principle of constructive seizure can't be used to allow these fishing vessels to continue without having to post a bond that we have made reference to?

Admiral YOST. I think you are asking me a legal question, and not being a lawyer, I would again refer to my legal advisor to my right if you will allow me to.

Mr. VANCE. I can give you one very brief reason for that. The Coast Guard cannot make at sea the kind of determinations that the Customs Service is able to make at shore at port. They can make determinations whether the circumstances exist, whether

there ought to be a seizure, send the vessel to port, and then the Customs Service can immediately address the case.

But those kinds of things, such as owner innocence, whether certain things might have been done to prevent usage, those kinds of things cannot be well addressed at sea by the Coast Guard.

Mr. PICKETT. That's not the point I'm talking about. The point is, that once the Coast Guard has noted that this is a vessel that potentially is in violation and subject to seizure, why can't that vessel continue to operate under that liability and allow the owner to continue in the fishing so that these people's jobs and livelihood during this limited period of time that they can fish is not going to be adversely affected, and the decision about whether or not the vessel is actually going to be taken and sold made at a later time. Is there any reason why that can't be done?

Mr. VANCE. If it is done—our feeling is that we have tried to put out guidelines where we look for the cases where there ought to be a seizure or the issue ought to be addressed, and if there is not, there won't be a seizure. If you start using the procedures like that, exemptions, bonds at sea, then you don't have a zero tolerance program.

Mr. PICKETT. Well, would you agree that if the vessel is noted as a vessel subject to seizure, and it can be taken and disposed of at a later time, that the principle that you are trying to put forward here will be carried out?

Mr. VANCE. I don't think it will be carried out as well as a seizure that requires returning to port and——

Mr. PICKETT. You want to cause the maximum inconvenience to the owners and operators of the vessel. Is that the idea behind the policy?

Mr. VANCE. No. There is going to be some amount of inconvenience, and we've tried to draw these guidelines where that inconvenience would be suffered only in the most justified cases.

Mr. PICKETT. I thought the purpose of the seizure was to be able to have the vessel to be able to be disposed of by the Government. Now, if that's not a problem, why should the Government be concerned about allowing the owner to continue operating the vessel in his trade?

Mr. VANCE. I agree, you have a bond, if you were able to post a bond and post a bond at sea and make these determinations at sea. I don't think the Coast Guard can make the kinds of determinations about what is going on with the vessel, whether a bond is appropriate, other aspects of the case at sea, at that point.

Mr. PICKETT. If I may, the only purpose of a bond is to guarantee the performance of the person giving the bond.

Mr. VANCE. Yes, I understand.

Mr. PICKETT. So if that vessel is not going anywhere, if he is going to be working out of the same port and subject to surveillance at all times, why isn't it appropriate to use this principle of constructive seizure so that these workers don't lose their jobs and that the master of the vessels don't lose the opportunity to fish during the fishing season?

Mr. VANCE. He is not subject to surveillance at all times.

He may be hundreds of miles at sea. In that case, it would have taken a pretty substantial finding to have required him to come to

port. We are not talking about just simple possession, but it would have had to have been something substantial. In that case, I think it is justified that he should come to port and that those issues ought to be addressed.

I think if there were constructive seizure and those kinds of circumstances were present, that is, traces of drugs, at sea, then it wouldn't be justified to use constructive or any other seizure.

Mr. PICKETT. Mr. Chairman, I didn't get an answer to my question, but I think the import is clear that obviously what they are trying to do is to cause the maximum inconvenience to these fishing operators as opposed to a genuine concern about the availability of the vessel to be disposed of in the event the government wants to do it.

Thank you.

Mr. HUTTO. Thank you, Mr. Pickett.

Mr. Coble.

Mr. COBLE. Mr. Chairman, I thank you for your patience, and I will be brief.

As I said at the outset, zero tolerance should not be gutted, but there should be some middle ground, and I think this hearing has brought light to that.

I want to touch on something you said, Mr. Chairman, concerning education because it appears that the lines of communications must be lucidly clear.

In response to the gentleman from Michigan, Mr. von Raab's response reminded me of a response of a highly ranking bureaucrat perched snugly in his bureaucratic chair, loftily looking down at the masses. That is not the way to go about this. There is no member of this committee or no person in this room who feels more totally opposed to drugs than I, but I don't want us to be guilty of overreacting and taking the innocent with the guilty. That's what bothers me.

Mr. Chairman, I think that's where your educational approach is going to be very vital as we go about this. I think some of these bureaucrats, highly ranking and otherwise, need to exercise some flexibility as we go about it.

One saving clause in this formula is Paul Yost. There is no man in this city whom I admire any more than I do the Commandant of the Coast Guard. Paul, we may have you to hold school one day and see how it's done to communicate, because I think—Mr. Chairman, if I sound like I'm giving my sermon, I apologize, but I have just been very disheartened as I've seen this develop today. I hope we can do better.

Mr. HUTTO. OK. A lot of preaching has been done. It's legal.

Mr. Brennan.

Mr. BRENNAN. Thank you, Mr. Chairman. I will be brief, but I do want to make a couple of comments.

In the war on drugs, we as a nation must not panic. We must be tough, we must be smart, we must not be in it just for this political season. We must be in it for the long haul, but we must be constitutional in our law enforcement. We are a nation based on the rule of law. We are a nation that has a judicial system which the very bedrock is the presumption of innocence.

The Government officials of this Nation must comply with the spirit of the rule of law and the presumption of innocence.

My sense from the colloquy here this morning is that maybe some panic has set in. I urge these agencies in front of us to be aggressive, again to be smart, but to comport with the presumption of innocence.

We all want to win the war against drugs. We know we are not going to win it with simple rhetoric. If we did, we would have won it 10 years ago. There's all sorts of that. I don't believe we will win it by violating the spirit of the rule of law.

I think we have a better chance of winning it when we don't deal with nations once we find out they are dealing with drugs, like Noriega, at that moment we stop. But we didn't. We continued to do it.

I urge your agencies again to work very hard at it, but to think that you must operate under the Constitution, you must operate under the presumption of innocence. There is no right whatsoever for any Government official to trample over anybody's rights. I appreciate the panic, the hysteria that has set in in this Nation today. I think you have grave responsibilities, to be aggressive, tough, smart, but constitutional.

Mr. HUTTO. Thank you, Mr. Brennan.

Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

Admiral Yost, could you tell me what is the average turnaround time—excuse me, Mr. von Raab, what is the average turnaround time for Customs on a ship that has been seized that is innocent?

Mr. VON RAAB. I don't have that information. I would have to compile it from the past month or two. If it is obviously innocent, it should not and would not be picked up to start with. If it is clear that it is innocent when it comes into port we would cancel the seizure without going through any process. However, if there is a question of the innocence of the owner, then there will be an investigation in which the owner himself would provide information and Customs would check that information. If you are in that third category, you are going to be looking at some weeks, during which time, however, the owner can, in effect, bail out his ship or his car by posting a bond.

Mr. HERGER. Thank you.

Mr. Vance, has your department considered making certain exceptions for commercial fishing?

Mr. VANCE. No. As in the manner for commercial carriers? No, we have not. We have not considered making exceptions.

Mr. HERGER. What has your department done to correct some of the concerns that have been brought about since its initial month of implementation?

Mr. VANCE. I think we've done a great deal on a number of fronts, and we are going to be doing a great deal more. One thing that we have done in finding some ripples in a new program, some new problems that were presented to us in the implementation of this program, we have worked closely with Customs and come up with what I think are some very tight and good guidelines that will even further enhance what has been a very cooperative and successful effort by these two agencies.

Admiral Yost has outlined just a few minutes ago an educational program that he intends to undertake. Let me say that the Department of Transportation and the Secretary are going to commit all of our resources to get behind that educational program and advance it.

Mr. HERGER. Thank you. We are all hearing a number of concerns here this morning. I feel undoubtedly some of them are legitimate concerns.

We also hear each of us in each of our 435 congressional districts in the Nation one of the top issues today becoming more of an issue, this problem on drugs. There is a lot of rhetoric, if you will, that we hear within the Congress, elsewhere, on doing something about it.

It would appear to me that this no tolerance plan is an attempt to indeed do something about. I support the working out the problems that we have, we've heard a number of them, whether they be with commercial fishermen, whether it be seizing those ships that are indeed innocent, that we do set some guidelines down.

But I, for one, want to encourage you to continue I think in the direction that we are going once we have worked out the kinks in it. I think the American public is very clearly demanding that we do that. I want to again encourage you to continue.

But the bottom line is, we have to do more than just talk about it. These people have to know that we are going to be getting tough, and I feel that the move we are taking is a move in the right direction.

Mr. VANCE. Thank you.

Mr. HUTTO. Thank you very much, Mr. Herger.

Mr. Bennett.

Mr. BENNETT. I know the admiral and Mr. von Raab very well. I don't know Mr. Vance very well. But I know that all of them have expressed here a desire to see the Constitution is carried out, that innocent people are not hurt. We have given you a lot of advice in that direction too.

In our own lives we have lots of times when we make mistakes, and that is pointed out by the press. That's good. That helps to improve whatever we want to do.

I would urge that after having heard the testimony today that somewhere in the structure of the Government, Coast Guard, Customs, or wherever, that there be some man, woman, or small agency that could address the humanitarian problems, particularly the commercial fishermen. In other words, if they have a problem, and they don't have the lawyers, they don't know how to go to a lawyer, if there was somebody you could appeal to that was a man of judgment, woman of judgment, who could see to it that some innocent person is not unduly hurt, I think that would be an asset.

Now, George Santayna said some years ago something like "people who are ignorant of history are destined to relive it or condemned to relive it." Since I'm so ancient, I've got three score and ten and plus, I've been here 40 years, if it is not inappropriate, I like to look a little bit at history.

I remember when I was a teenager the desperation to which this country had been brought by the gangsters. In other words, it looked like the government was not powerful enough to do any-

thing about the gangster. Who was head of it—Capone. He was eventually caught for? He wasn't caught for the murders, he wasn't caught for the horrible things that laid this country at his feet, he was caught for IRS violations, and he spent the rest of his life away from society. That thing came to an end. In other words, that door was closed.

That could be appropriate in some of the things you are thinking about here today because people, these crafty people who are trying to do our country in use all kinds of devices. So I encourage you to find people who are violating the law. You may find some person who isn't really very guilty who just has one roach or whatever they call it on board the ship, but you may be able to get at somebody that way.

The other point of history which I remember is when we had the question of the illegal aliens coming into this country. I was a good friend of Jimmy Carter, and he asked me to come down and talk to him at the White House. He said, "What can I do about it, Charlie? I don't know really what is an answer." I said, there's a really easy answer. It's a painful answer for me to give to you because some of these boats are coming out of my own district. They are shrimp boats and other fishing boats. They are getting $1,000 a head for these people. If you'll just seize the ships, it will be over quite quickly. He did it the next day, and it was over quite quickly. In other words, that single decision by Jimmy Carter to say, well, the answer is we will just seize the ships, which he did, and it ended the thing.

So looking back in history sometimes tells us some things that are worthwhile.

Now I realize that most of this hearing has been in the direction of Congress giving you all advice, and you are doing the best you can to do what we all want you to do. I would think that there is something I would like to have come forward. If there is anything in the law that you would like to change in the way of improving it, for instance, I don't see a reason why if our statutes are not effective with regard to beyond the 12-mile limit, I, myself, would be glad to introduce a bill which would help you in that to see to it you could do whatever you can constitutionally do beyond the 12-mile limit.

So I don't think we need to look at this hearing as entirely one looking at what you may have mistakenly done that we didn't like done, but also see if there is some statute that might be improved by the way of strengthening it. I want to congratulate the spirit that you have all shown here. I want to congratulate the chairman too and the committee in coming to grips with this question, as it should. This is the way Congress ought to act, and you have made a real good expose of what's happened, and you told us you want to constitutionally protect people, and you want to see to it that their basic rights are preserved.

The only suggestion I have about that is that somebody be assigned somewhere in the government to assist innocent fishermen if they are apprehended—someplace that they can go to. They should not have to go to you, Mr. von Raab, or Admiral Yost. There ought to be some person who could be a public relations person of some sort that could advise them as to what they could

do to be advised quickly, if they are innocent, and get rid of the problem.

Mr. VON RAAB. Right now they do go to the district director, who is an individual who usually knows the local community pretty well. However, I agree that it would be probably useful if Customs were to, at least until the program has been underway for a longer time, provide maybe a more agreeable ear to them and give them some explanations. I'm sure that Congressman Davis and Congressman Young certainly wouldn't like to think they would have to come to me for this help. We will try to come up with someone who will be useful. I think it's a good idea.

Mr. BENNETT. I want to conclude my remarks by saying that although it is very important to do everything we can in the case of enforcement and carrying out the law, the real heart of the fight on drugs is going to have to come through education. People are going to have to stop the demand. That doesn't mean what you are doing is ineffective. You've got to do it too. Everybody's got to do everything they can to stop drugs, but the heart of the answer really lies in young people and other people deciding that they are going to opt through patriotism or whatever it is, if love of the people around them, their families or whatever it is that makes them decide, "I'm not going to take drugs because it is not in the public interest and it's not in my personal interest."

That's all I have to say. Thank you.

Mr. HUTTO. Thank you, Mr. Bennett. I agree 100 percent.

Mr. Hughes.

Mr. HUGHES. Thank you very much, Mr. Chairman.

First, I would like to find out, when the National Drug Policy Board voted to implement zero tolerance, how much discussion took place in the Policy Board, just some idea?

Mr. VON RAAB. Congressman, I wasn't at the National Drug Policy Board when it was discussed. The issue was first discussed among a number of officials on an informal basis. Then it was decided to present it to a lower level group which is called the Coordinating Committee. I don't remember exactly how many minutes or how many hours it was discussed——

Mr. HUGHES. Well, you've answered my question. You weren't there, so you don't know.

Mr. VON RAAB. I was not at the board itself, I believe that the recommendation from the coordinating group was forwarded up to them, and I don't know how long they discussed it.

Mr. HUGHES. Admiral, were you at the National Drug Policy Board when the decision was made to implement?

Admiral YOST. No; I wasn't, sir. That's a cabinet level board. I'm invited sometimes to go, but I wasn't there for that session.

Mr. HUGHES. Mr. Vance, were you present?

Mr. VANCE. No. As the admiral has pointed out, it was a cabinet level.

Mr. HUGHES. Does anybody know, personal knowledge, whether this was approved by the attorney general, the chairman?

Mr. VON RAAB. Oh, I'm certain that it was. I mean, he is the chairman of the board.

Mr. HUGHES. You are certain because you have talked with the attorney general about that, or you are certain that that would be the process normally?

Mr. VON RAAB. He is strongly supporting the program. As recently as yesterday, he made a statement to the press. I have talked to him about the program and am well aware that he supported it going into the National Drug Policy Board and continues to support it.

Mr. HUGHES. All right.

Admiral, how many mid and high endurance cutters do we have idle presently because of the $105 and now perhaps $60 million shortfall which required the Coast Guard to reduce its interdiction effort by 55 percent?

Admiral YOST. Well, we have 12 of those cutters, and 55 percent would be somewhere around 7 on an average would be idle.

Mr. HUGHES. Now these are the cutters that we use in the choke points, in the Caribbean in particular, and other places?

Admiral YOST. They are used in the Caribbean. They are also used in Bering Sea fisheries.

Mr. HUGHES. But also, they are the cutters we use for interdiction of drugs on the high seas?

Admiral YOST. Yes, they are.

Mr. HUGHES. So we have reduced our capability by what percentage?

Admiral YOST. Well, we stopped 55 percent of all of our drug patrols, both air and sea, and fisheries patrols, and search and rescue patrols, 55 percent of our effort.

Mr. HUGHES. Now how much resource is used in implementing the zero tolerance provisions of the law?

Admiral YOST. As I said in my opening statement, very close to zero because we do not board a vessel in order to enforce zero tolerance. We board a vessel to see if it is carrying massive loads of drugs. If it is obvious that there is a roach laying out on the table or marijuana spilling out of a purse, then we no longer ignore it. That's the only change.

Mr. HUGHES. Well, Admiral, my fishermen are telling me that they are being stopped frequently by Coast Guard personnel and that they are not looking at anything except for contraband. Now I am getting it from more than one fisherman. So I have to presume, in view of the pattern——

Admiral YOST. The guidelines that I put out over the weekend, last week, were that we would continue to look for contraband in smuggler loads, but we would not ignore personal quantities if we found them, but we would not search specifically without probable cause for personal quantities.

Now that may have been a change, it was a change as of last weekend.

Mr. HUGHES. My point, of course, is that we are already strained in resources. We have had to decrease our vigilance in trying to intercept traffickers on the high seas because we don't have resources, and yet we turn around and use the resources to enforce a zero tolerance policy that I view as being a disaster. I am one that believes that we ought to have zero tolerance with regard to users, not just on the high seas, and we ought to be developing a compre-

hensive strategy to deal with users of all kinds on and off the sea. We haven't done that.

We convened a hearing of my Crime Subcommittee a few months ago, as you know, you were very kind to participate, on the forfeiture law that we wrote in our subcommittee. We have perhaps 200 to 300 vessels now in south Florida that we have seized. It looks like the Spanish Armada. We have a couple of thousand pieces of real estate that we can't process through the criminal and civil forfeiture processes because we don't have resources.

I just received complaints within the hour from local governments that are not receiving their fair share, as they perceive it, of those resources because we don't have sufficient U.S. attorneys, U.S. marshals, and we don't even have sufficient judges to hear the cases. Even in the administrative forfeiture procedures, as Commissioner von Raab will attest to, while they are there to help us expedite cases, they are not being utilized fully because we don't have resources. We seized $500 million in assets from traffickers last year, and we could be seizing an equal number this year or more with more resources. That's where, it seems to me, we ought to be prioritizing resources.

Mr. VON RAAB. It is, sir. I assure you that it is, and that is where we will prioritize our resources.

Mr. HUGHES. I heard, was—is it Ms. Anderson?

Mr. VON RAAB. Yes.

Mr. HUGHES. Testified insofar as the definition of what is a common carrier. I have never heard of a head boat being referred to as a common carrier. A common carrier by definition is a carrier that goes from one place to another for charge. A head boat takes fishermen out for a half a day or a full day and it's not a common carrier. I would like to know on what basis you would classify a head boat as a common carrier?

Ms. ANDERSON. Sir, it is my understanding that any vessel which will carry passengers at the passenger's will; that is, any person who comes and asks to get aboard——

Mr. HUGHES. How about a charter? How about a fishing boat that takes individuals out for charter for a half a day? How would you characterize that?

Ms. ANDERSON. If the charter is to a specific party of people, this group of four people, where they can control who gets on their boat, I would say that is probably not technically a common carrier.

Mr. HUGHES. I have literally hundreds of charter boats, Mrs. Anderson, in our State. I represent the southern portion of New Jersey, and it is a major livelihood. Tourism is our major industry. How in the world could a charter boat captain protect himself? What is he to do, search the individuals coming on board his charter boats to make sure that his vessel is not seized?

Ms. ANDERSON. Sir, I think that the thing that the charter boat captain has to make clear—we aren't asking him to search each of his people. He has to make it clear that he has made it known to anyone that is coming aboard his vessel that he won't tolerate drugs on his vessel, that he doesn't want drugs on his vessel, that anybody who is found aboard his vessel will not be kept aboard his

vessel, and that if possible he can contact local enforcement authorities if he finds people like that and turn them over.

Mr. HUGHES. Suppose he has done that, and a Coast Guard boarding party determines that one of the passengers put out a marijuana cigarette on the deck of the vessel, and it is found. Is it seizable?

Ms. ANDERSON. Sir, the vessel is always seizable because any vessel with any amount of drugs aboard is seizable. The question now is whether he is an innocent owner who should get his boat back.

Mr. HUGHES. Commissioner, is it your view, or, Admiral, is it your view, that that is a prudent use of resources?

Mr. VON RAAB. In that case, it depends on how you find it. If the Coast Guard found it they would ask, I assume, if they felt that that boat should be sent, they would ask that boat to go ashore. They wouldn't accompany it.

Mr. HUGHES. They are going to have to accompany the boat.

Mr. VON RAAB. No, that's not the policy. The policy is not to accompany these boats.

Mr. HUGHES. Who is going to in fact greet them at the shore? Is it going to be Customs or is it going to be the local police, or who is it going to be?

Mr. VON RAAB. The Customs Service. It would report to Customs, and at that point the conditions would have been told to Customs, and we would take action. Under those circumstances, as you described it, we probably would tell them that, having talked to the owner, we would probably release the boat immediately.

Mr. HUGHES. First of all, you would try to determine that it was a marijuana cigarette, I presume?

Mr. VON RAAB. Well, that individual would probably be arrested.

Mr. HUGHES. That requires an investigation. Then it would require an interrogation of the captain.

Mr. VON RAAB. That's correct.

Mr. HUGHES. It would require an interrogation of the crew, an interrogation of the passengers.

Mr. VON RAAB. No. I believe in that case, we would be satisfied with just talking to the captain and finding out what——

Mr. HUGHES. Commissioner, in all due respect, you know, I served about 10 years trying criminal cases.

Mr. VON RAAB. I know. I am a regular customer before your committee.

Mr. HUGHES. I just think that is nonsensical.

Mr. VON RAAB. I understand you disagree.

Mr. HUGHES. I think that is a total waste of resources when we can't in fact do our job because we are not providing resources to the agencies as it is to prioritize and get at the people who really make a difference. I am not saying that because I have any sympathy whatsoever for the person that smoked that marijuana cigarette. As far as I am concerned, we ought to be developing sanctions for those who smoke the cigarettes.

So I agree with the thrust of the policy. Without users, we wouldn't have traffickers. Without traffickers, we wouldn't have the major problem. So I am not coming at it as somebody who is sympathetic with users. I have demonstrated that.

I just don't think that we are using resources, precious resources, prudently.

Mr. VON RAAB. Well, we have a disagreement over the degree to which these resources are being used on this. I believe they are at a lower level than you think. However——

Mr. HUGHES. Well, I can tell you, Commissioner, that I haven't heard from any owners of big yachts. None of my constituents have complained that they feel that their $2.3 million yacht is at risk. I have heard from the little guys, the people who have charter boats, head boats, who don't know how to deal with it. Frankly, the policy hasn't been thought through. I mean, you call it a mid-course correction. I call it somewhat of a disaster. The Coast Guard is not in the business, never has been, of harassing fishermen.

You know, the whole thing is just embarrassing. It is the kind of knee-jerk reaction, the kind of emotionalism, the one-upsmanship that my colleague, Mr. Davis of Michigan, talked about that I see on the floor that concerns me.

We have a good strategy, and we know how to turn the corner on drugs. We have the strategy to do that, a five-point strategy. If we commit ourselves to that strategy and provide you folks with the kind of resources you need, we'd make a difference. But we haven't yet done that. We are still looking for gimmicks, you know, and symbolic ways to deal with it, and cute little ways to try to suggest that we are tough, when in fact we are not making the kind of commitments, sustaining commitments—I'm not talking about election year commitments and then nonelection uncommitments—I'm talking about sustained commitments are going to make a difference. We haven't done that yet.

Thank you, Mr. Chairman.

Mr. VON RAAB. Mr. Congressman, I understand your position. I certainly would only like to say that my conversations with the various associations, whether they be a trucking association, boating, et cetera, as well as foreign governments, we have made a difference. The U.S. borders are now thought of as borders that you will not attempt to cross if you are carrying drugs. The Canadians themselves have forewarned individuals entering the United States that they had better not carry drugs into the United States because there is a certainty that they will be arrested. They have also said that Ottawa will not assist in those situations.

I think a good message has gone out that the Federal Government is tougher and taking the issue of small amounts very seriously. I think that's a good side to this program.

Mr. HUGHES. Mr. Chairman, I know my time is up.

Our southern border, Commissioner, is a sieve. Thirty-five to 40 percent of the cocaine is now coming across that border. Flights are coming across our border almost at will in some areas.

While we have made some progress, we have yet to make the kind of full-court press that will make a difference.

Mr. VON RAAB. That gets into a whole series of issues, some of which are international, having to do with the degree to which Mexico would cooperate with us.

Mr. HUGHES. I agree. But my point is, you know, anybody that believes or suggests that our borders are secure really hasn't looked at the facts.

Mr. VON RAAB. I did not suggest that. I agree with you 100 percent that our southern border is a sieve. But I can also assure you that none of the resources that are being used in this effort are being pulled off anything. Those are the same resources that happened to run across, as the admiral indicated, small amounts which, by the way, we have to process anyway. This is something that is lost.

If we find a small amount of drugs on a passenger or in a ship, we can't just throw it overboard. We have to go through the same process of taking that and filing all the forms. So what we are doing here is taking that process we are required to go through and making certain the person is arrested.

By the way, the heart of zero tolerance is the arrest side of it. I realize seizures are terribly important to this committee, but the basic thrust of zero tolerance as it was announced in the middle of March was that all individuals caught at the border with drugs would be arrested. That's really the big issue. We've always been seizing these boats and planes.

Mr. HUGHES. Mr. Chairman, I know that my time is way up. I am not criticizing basically the job that Customs and Coast Guard does. I think they do yeoman's work. I happen to disagree with a policy that wasn't thought through very well. It is a misallocation of resources. That's the point I make.

I commend you for your work. I think that Coast Guard and Customs has done fine work. You are understaffed, you are undermanned, we are working on the margin. We need more resources, and hopefully we will get the resources, and when we do, we will make a difference.

Mr. HUTTO. Thank you very much, Mr. Hughes.

I have a couple of letters here, many I guess, that the members have received that I am going to give you copies of. When you get your guidelines and work them up, and I hope that will be very soon, I hope you will take these into consideration.

I want to thank you very much for your time today being here with us, for your testimony, and also for the good work that you have done and are doing. I believe that you all have received a very strong message that we do want you to be tough. We want you to prosecute, but we don't want you to punish the innocent. I know that your time is valuable and you won't be able to stay. If you would leave someone here to hear the other witnesses and take that message back, we would appreciate it.

Mr. VON RAAB. We will be leaving Janet Labuda here, who is a major manager of the zero tolerance program.

Mr. HUTTO. Thank you very much, Commissioner von Raab, Admiral Yost, and Mr. Vance. Thank you for being with us.

Now we will call our second panel up, Mr. Phelps, Mr. David L. Phelps, owner of a seized fishing vessel, who is accompanied by David P. Horan. Mr. Horan is an attorney. Robert P. Jones, executive director, Southeastern Fisheries Association, accompanied by B.J. Putnam, board of directors, Southeastern Fisheries Association and Bay County, Florida Charter Boat Association, and Mr. Jerry Schill, executive director, North Carolina Fisheries Association.

We are delighted to have you gentlemen with us today. Mr. Phelps, if you would just tell us your story now, I think the subcommittee would be interested in that.

STATEMENT OF DAVID L. PHELPS, OWNER OF SEIZED FISHING VESSEL, ACCOMPANIED BY DAVID P. HORAN, ATTORNEY

Mr. PHELPS. Thank you, Mr. Chairman.

Ladies and gentlemen, it's a pleasure to be here. I don't even know why I'm here because I am no drug dealer, I'm no dope smoker. I've never been one, I never will be one. But yet, they have seized my boat. They took my opportunity of making a living, the only support and means I have of supporting my family. I have a wife I've been married 16 years with. I have two children. One is 8 years old, and he will probably be in a situation where he will have to deal with drugs before long. I don't want that.

I am totally against drugs coming into this country, but I see no reason of prosecuting an innocent person for no reason at all, knowing that he didn't have anything aboard the boat.

Mr. HUTTO. Can you tell us how this happened?

Mr. PHELPS. Well, I had been out fishing for 8 days. We were on the way back to the dock. Two days prior a Coast Guard vessel had circled my boat, turned around, went down by another boat, came back and circled my boat again and left. That was the night before I came in.

The day that I came in it was pretty rough, and there was a small Customs boat out. He came out behind the islands. As a matter of fact, I got my crew, I said, "Look at that fool coming out in that 20-foot boat," with me in a 70- foot boat taking seas over the bow. He came by my stern, turned around and went back in behind the islands.

As I proceeded to the dock, after I crossed the Norwest Channel, another Coast Guard vessel fell in behind me. He followed me from the point of Key West into Stock Island where I was tied up to unload my shrimp. I always leave my radio on 16. They called me and said they were doing a routine boarding. I didn't think nothing about it. I even went out and caught their lines for them.

They took me to the stern of my vessel. They wouldn't even let me go with them when they searched my vessel. I asked them, could I go ahead and melt the ice out of my shrimp and take my shrimp off the boat while they were searching the boat. They were making routine inspections, they said, of fire extinguishers and life jackets. Like I said, to just melt the ice out, and I wanted to go back in the wheel house to turn the pump on keep the water from rising up in the bottom of my boat as I melted the ice out of the shrimp.

The guy who was on the stern, I don't even know his name. The boarding officer was David McCarthy. He was in the wheel house at the time when I went up there to turn the pump on. The guy that I went with, he told him to, "Get him back to the stern." He said, "Right now, get him back to the stern of the boat." I didn't have no rights when they boarded me. They took every right I had from me when they boarded my boat and forced me to the stern.

I don't know what goes on when they do that. Like I say, I've been married for 16 years. I'm no drug smuggler. I never have. I never will be.

The problem is that I don't even allow drugs around. I'm a hard worker. As a matter of fact, you can ask any of the fish houses in Key West. As a matter of fact, I was top producer at the fish house where they boarded the vessel and they seized my boat on May 3.

There was no hearing. I didn't have no chance to——

Mr. HUTTO. Wait a minute, maybe I missed it. Why did they confiscate your boat?

Mr. PHELPS. They said they found contraband. They found it in the trash cans.

Mr. HUTTO. But you didn't see it? They didn't show it to you?

Mr. PHELPS. I had no idea it was even on the boat until the boarding officer told me that I was under arrest for contraband. At that time, they put my crew under arrest and put them aboard the Coast Guard vessel, and told me I had to take my boat down to the Coast Guard station.

Mr. HUTTO. What did they say—was it marijuana or what?

Mr. PHELPS. They just said it was contraband. They didn't tell me if it was marijuana or what, but it was stems and seeds that the report read.

Mr. HUTTO. It didn't say how much or anything like that?

Mr. PHELPS. Less than one-twentieth of an ounce of stems and seeds.

Mr. HUTTO. Do you have any kind of policy with your crew members?

Mr. PHELPS. I've always told the crew to don't bring the drugs on the boat. If they wanted to do drugs, go up the street.

Mr. HUTTO. Does that include alcohol?

Mr. PHELPS. That includes hard liquor. We drink beer occasionally on the boat when we are out fishing during the day, but never no more than four six packs on a 10- or 12-day trip.

Mr. HUTTO. I'm assuming that's not just for one. You are talking about for the crew?

Mr. PHELPS. Yes. There is most of the time three crew members. I don't believe the crew members could get totally drunk on a case of beer in 10 or 12 days. I don't allow my crews to drink on the boat while they are working. While we are fishing, pleasure fishing during the day when it's hot, we do occasionally have a cold beer.

Mr. HUTTO. What happened after that now, after they took your crew?

Mr. PHELPS. Well, they carried us to the Coast Guard station. That was after we had already melted the ice out of the shrimp, and they wouldn't let me take them off the boat. They took us to the Coast Guard station. We were held down there, it must have been 3 of 4 hours while they were searching the boat. They took crowbars, I heard them, tearing my boat apart with crowbars. I was upset. I said, "Why don't you just take a dog or something and go down there and let him smell. There ain't no contraband or no drugs aboard my vessel." But that didn't make no difference.

Like I say, I didn't have no rights once the Coast Guard boarded my vessel and took me to the Coast Guard station. They did let me

try to re-ice the shrimp, but not totally, you know, to hold them to another day.

Mr. HUTTO. Is this the first time you've ever been boarded?

Mr. PHELPS. No, sir. I've been boarded on quite a few occasions, at gun point, and I have been boarded at night not even knowing that the Coast Guard was aboard my vessel. No lights, no blue lights, no call. The next thing I know, here comes a Coast Guardsman walking up the sides of my boat. On other occasions, before I could even get boats tied up, Customs or DEA agents, before I can get lines to tie my boat up, they will board my vessel. I've never been arrested for nothing. I've never had no record.

I just feel like my rights have been violated. They confiscated my shrimp. I had $5,800 worth of shrimp that they confiscated, which they sold and kept the money. If I had sold the shrimp I would have had $7,300 worth because they didn't know what they were doing when they sold the shrimp. By grading the shrimp—I don't know if anybody knows what they are—by grading the shrimp, what they do, they separate the small shrimp from the big shrimp. I lost approximately $1,500 by them even confiscating my shrimp.

Mr. HUTTO. So that was on May 3, did you say?

Mr. PHELPS. Yes, sir, May 3.

Mr. HUTTO. You still don't have the boat back?

Mr. PHELPS. No, sir. As a matter of fact, I just got papers yesterday from U.S. Customs in Miami. I called Customs in Key West, we've called Customs in Miami, and they have refused to give us out any information, what kind of shape the boat is in. I do know that—I have eye witnesses that they have run the boat aground off Marathon, FL trying to get the boat in there. I've been trying to find out what kind of conditions the boats are in, but I can't get no information from nobody.

The lady in Miami said if we called and got the seizure number, that we could find out. After we got the seizure number from Agent Jeffries, we called back Miami. She said she still couldn't give us out no information until we received the forfeiture procedures in the mail.

Mr. HUTTO. Mr. Phelps, how much does it cost you per day as far as your business is concerned while your boat is forfeited?

Mr. PHELPS. Well, we usually try to work on $1,000 a night with shrimp, even to turn over any money at all with the price of fuel cost and crew pay.

Mr. HUTTO. Is there any way you can make this up? Is yours a seasonal business?

Mr. PHELPS. Sir.

Mr. HUTTO. Is there any way you can make up that?

Mr. PHELPS. No, sir, no way.

Mr. HUTTO. May 3 would have been over three weeks ago.

Mr. PHELPS. Yes, almost 4 weeks ago.

Mr. HUTTO. Customs told our staff on Monday that the boat owner is notified in 3 days.

Mr. PHELPS. They wouldn't even notify me. They wouldn't even talk with me. I tried on several occasions. Besides the shrimp that they confiscated, when I went to get my personal belongings off the boat—I was going to take my freezer, my meats and stuff out of the freezer, my milk and stuff out of the hole. I didn't see no sense in

forfeiting that to them. I could use it. My family could eat it. They wouldn't even give me that. There was 75 to 80 pounds of fish they confiscated, probably a couple of hundred dollars or more that nobody even knows what happened to.

Mr. HUTTO. Do you know where your boat is now?

Mr. PHELPS. No, sir.

Mr. HUTTO. Mr. Phelps, thank you. I think we will ask Mr. Horan who is your attorney, do you have a statement or comment, Mr. Horan?

Mr. HORAN. Yes. Chairman Hutto, members of the committee. I've got to take issue that a few statements that Mr. von Raab of Customs said. At risk of incurring his wrath, I need to inform you of a few facts.

There was less than one-twentieth of an ounce of marijuana found on board which consisted of the end of a smoked marijuana cigarette of indeterminate age, a few seeds, and a few bare stems. A crew member said voluntarily upon boarding in a sworn statement later that he found stems and seeds and a clip, a little alligator clip or something like that in a box in an unused crew's quarters storage drawer. Sworn affidavits from both crew state that Mr. Phelps did not know of the seeds and stems even being found by the crew and dumped into the trash can where they were found by these Coast Guard officers.

Now what happened? All three men were held. Local law enforcement were called. They were already placed under arrest by the Coast Guard, but then they were charged under violations of local law with possession of less than ten grams of marijuana and possession of narcotic paraphernalia being the little clip that was found on the boat.

Thousands upon thousands of dollars of shrimp were seized and sold by the Coast Guard or by Customs, and the proceeds were held by Customs. The boat was then turned over to Customs who then turned it over to a private contractor by the name of Northrop who takes the boat, including the food and the personal possessions on board. They left Key West, ran the boat aground at Marathon, FL, and 3 weeks later on Friday of this last week, the district director, undoubtedly due to this particular commission meeting and this hearing coming up right here today, he gets his first correspondence with Customs with no bond provision whatsoever, and he has been out all that time.

Now that's what the facts are. It is imperative that clearly and easily understood and implemented procedures have to be announced that will form minimal screening guidelines for commercial fishermen.

I've talked to them and they have talked to them about urine tests. First, they are extreme, they are costly, they are discriminatory if applied only to commercial fishermen. In fact, by the time you got the test back the people would already be out on the boat, and I don't think it would really be worthwhile.

A standard form written affidavit that no drugs would be carried on board or used while acting as a captain or crew member certainly would be reasonable, but it is probably not effective.

Now in David Phelps' case we are talking about only that very, very small amount. You know, the situation is that the officer's

notes of May 4, now this is the Coast Guard officer's notes of May 4, the day after the boat was taken, says this, and I quote: "The paraphernalia charges will be dropped. Can't prove who had it. The marijuana arrest is weak. Hard to prove who had possession." That's 1 day after the man's livelihood has been taken without any judicial process, without even any probable cause to believe that he is guilty of anything.

Now I know and you know that computers never forget. You can never teach those things to forget, especially NCIC's. Because of that, these men have now been arrested, they have been jailed, they are up on drug charges, although it is clear that one might have been guilty. But both of the crew have sworn affidavits that he didn't know anything about it. He has a criminal record now. That in itself is irreparable injury, and it should be unconstitutional.

Third, a man's livelihood was taken by the Federal Government without any provision for a pre or post-deprivation hearing before a judicial officer that can measure it against the constitutional standard. How do we reconcile the Constitution's mandate that no man's life, liberty or property may be taken without due process of law when in this case, in the liberty considerations you go before a judicial officer within 24 hours, and there has to be a determination within 24 hours or they have to let you go. But in the case of property considerations, you have no guarantee of any due process or probable cause hearing, either post or prior to the seizure, and you have been deprived of your livelihood without any due process of law. You are just waiting three weeks for some kind of a letter.

Finally, if zero tolerance is used to justify these deprivations without sufficient evidence of a crime by the owner, then the entire concept of our criminal law system is in jeopardy. These seizures and forfeitures are supposedly civil in nature. Proof required for forfeiture—now this is important—at a trial is a bare preponderance of the evidence, not to the exclusion of every reasonable doubt.

Now is there any question that taking a commercial fisherman's boat, which in many cases represents years and years of his earnings, is in fact a quasi-criminal penalty? Is this a defensible position? Does this punishment really fit the crime?

Justice Frankfurter said he didn't know how to define "obscenity", but he certainly knew what it looked like when he saw it. Can't you clearly see that depriving a commercial fisherman of his livelihood without so much as a probable cause hearing for the mere existence on board of one-twentieth of an ounce of marijuana is obscene. Justice Frankfurter would certainly think so.

It's a punishment which does not fit the crime. Everyone of us in Government and out of it know it. We can't allow Mr. Phelps' case to be over and over and over. We are taking a risk even being here because there is a possibility that they will become intractable in their position. Local general counsel in Miami says, "Listen, we are trying to do everything we can, but we can't get anything out of Washington that will let us let you have that boat back." That man doesn't have any savings. He is hand to mouth. He is never going to make it up.

That, Congressman Hutto, is exactly the point you just made. He can't ever make this up. You get behind when you are a commercial fisherman and you have fixed costs—and he has a mortgage on his house. He doesn't have a mortgage on his boat. He has finally paid that off. So his total asset that he has worked his adult life for has now been tied up and he hasn't had his chance to come in and air his grievances or have the probable cause determination. That should be a violation of the fourth and sixth amendments.

Mr. HUTTO. Thank you, Mr. Phelps, and, Mr. Horan, for relating your situation.

It's good for me to see a couple of old friends that I knew when I was in the Florida Legislature, Mr. Jones and Mr. Putnam here with us.

Mr. Jones, we will turn to you now for any comments that you may have.

STATEMENT OF ROBERT P. JONES, EXECUTIVE DIRECTOR, SOUTHEASTERN FISHERIES ASSOCIATION, ACCOMPANIED BY B.J. PUTNAM, BOARD OF DIRECTORS, SOUTHEASTERN FISHERIES ASSOCIATION AND BAY COUNTY, FLORIDA CHARTER BOAT ASSOCIATION

Mr. JONES. Thank you, Mr. Chairman. I will try to paraphrase the written remarks that we have presented to you.

Mr. HUTTO. Your prepared statement will appear in the record.

Mr. JONES. Thank you, sir.

It was difficult for us to write a statement in the first place. We knew when we tried to put something in writing or try to push for having these type of hearings that you had to be careful in what you said because we didn't want to come across as being soft on drugs or against any of the policies that are going to get at those people who are really bringing in the drugs. But by the same token, we were so very concerned with what was happening to some people that we felt were innocent third parties.

I think that the comments and the questions and all that has been brought out by the members of the committee as well as the eloquent remarks of a barrister from Key West here on a particular case makes my job much simpler.

Our trade association represents all type of fishing vessels, from shrimp to scallop to crabs. We cover the entire gulf and South Atlantic area. We are all committed to stemming the flow of drugs, but as has been pointed out here so well, many innocent fishermen can get swept up in the net of this particular law enforcement effort.

We think that the zero tolerance is not likely to achieve its objective of halting drug smuggling. We know that the people that are really in that business have no qualms about having their boats taken from them. If they are going to bring in a load of marijuana and they lose their boat, lose the boat that they are using, that's just a cost of doing business. But the man who has no control of what a crew member or a person may bring aboard that boat, he should not fit that same category.

I think that's the first reason I don't think the zero policy will work.

The second one is that it just unquestionably impacts unfairly on the innocent vessel owners and operators. As has been stated, we have many companies that require urine tests, we have statements that they have to sign that they won't use drugs. But that's about as far as you can go in telling and informing the crew not to bring them on board.

The third reason that it doesn't work, and one that has been troubling me for a long, long time, is the inappropriate treatment that comes down on innocent fishermen. When your boat is boarded by the Coast Guard, with or without guns, but particularly with guns, it can be very humiliating and demeaning, and it can be very scary. As Mr. Phelps had testified, to be awakened by the presence of someone on that vessel who is not supposed to be on there ordinarily, in your quarters can be a very fearful thing.

While the policy that Admiral Yost—and he is a long-time friend of ours also, and we respect him very much—while the policies that he talks about and how we should be treated is given from this chair in Washington, it is not being translated that way in the field. Many times we have very good professional boardings where the people, the Coast Guardsmen themselves are treating the fishermen as professional fishermen and as men. But there are other incidents where they are being treated less than human beings, and they are being treated as you would expect to be treated by some foreign government. That's the point that we want to make. That shouldn't happen. I don't know how to prevent it, but that is just something that we should not have.

I think that a point I would like to make also, and that Mr. Horan also has made, that there is a substantial cost in getting your boat back. You take it and you say OK, you get a bond, come see us, and if you can prove that the owner knew nothing about it, you can get your boat back. That takes a lot of time. It takes a lot of money. There is still a lot of down time connected to it.

I think that is all I'll say in that regard, but I would like to read a statement from the Organized Fishermen of Florida. Jerry Samson asked me to read this into the record.

Mr. HUTTO. We will be happy to enter it into the record without your reading it unless you just want to.

Mr. JONES. No, that's fine. We can save time.

Mr. HUTTO. We will be happy to enter that into the record if you will just submit it to us.

Mr. JONES. That concludes my remarks.

[The prepared statement of Mr. Jones and the statement of the Organized Fishermen of Florida may be found at the end of the hearing.]

Mr. HUTTO. Mr. Jones, thank you.

Mr. Jones is the executive director of the Southeastern Fisheries Association, and Mr. Putnam is on the board of directors, and also with the Bay County, Florida Charter Boat Association.

Mr. Putnam.

Mr. PUTNAM. Thank you, Mr. Chairman. Greetings from down home. It's nice to be here. I appreciate the opportunity to speak to you and the committee today.

My story is not one of arrest or seizure, but rather one of fear and uncertainty. According to the Florida Department of Natural

Resources figures, there are approximately 1,500 charter boats operating in the State of Florida that operate approximately 200 days a year carrying five passengers on each trip. Simple multiplication will show you that this comes out to approximately 1.5 million passengers a year in Florida alone. If you multiply that number by the other States along the gulf and the Atlantic Coast, you will find it will probably go into the tens of millions.

We have probably an excellent relation with the Eighth Coast Guard District. We have an annual meeting at least with those people, and they advise us of rules and regulations. I have a personal acquaintance of Admiral Yost and think very much of him. But to my knowledge, we have never been informed of any policy, rules, regulations, or any other matter containing zero tolerance except zero tolerance.

Carrying 1.5 million people without the authority to perform body searches, I am sure there has been some drugs on the boats, but not to the knowledge of the owners or the captains. They are totally opposed to it. They would do anything to prevent the importation of drugs, but there is nothing we can do if a passenger comes on board with something in his cooler, on his body, in his billfold or whatever.

But we are frightened because we don't have any policies. We are frightened because we don't know what the seizures may be. After hearing the case of Mr. Phelps, I am sure we are more frightened than ever.

Thank you, Mr. Chairman.

Mr. HUTTO. I think you put it very well, Mr. Putnam.

Mr. Schill is the executive director of the North Carolina Fisheries Association. We will be happy to hear your statement.

STATEMENT OF JERRY SCHILL, EXECUTIVE DIRECTOR, NORTH CAROLINA FISHERIES ASSOCIATION

Mr. SCHILL. Thank you, Mr. Chairman, members of the committee. I am very glad to be here.

After working on this issue for over 3 weeks, our experience has been you might be able to dub this mess, instead of "zero tolerance" the "attorney's subsidy policy" because of the moneys that this has cost our fishermen.

I appreciate this opportunity to address the problems surrounding the zero tolerance policy. The timeliness of this hearing certainly is evidence that our concerns are being heard by legislators and regulators. What we hope to provide today is an outline of events that show how unfair this policy is.

The North Carolina Fisheries Association is a private trade group that represents commercial fishermen, seafood dealers, and processors in N.C.

What I hope to do here is first explain how our group heard about zero tolerance, our reaction to it in general, and our intervention regarding a particular seized vessel, and finally, our thoughts on what the zero tolerance policy should be to have an end effect on drug use in this country.

We first heard about zero tolerance when hearing news accounts of the seizure of the *Lorraine Carol,* a 90-foot scallop vessel from

Lowland, NC. The *Lorraine Carol*'s captain and owner is Michael Ireland, and he employs a first mate and crew of 11. The *Lorraine Carol* was boarded by the Coast Guard on May 3, and found to have personal use amounts of marijuana, miscellaneous paraphernalia in the crew quarters, and a plastic bag with 1½ ounces of a white powdery substance that tested positive for barbiturates. The powder was found in a crewman's shaving kit. Customs was notified, and the morning of May 4th, Customs agents searched and seized the vessel. Under Customs supervision, the catch of 28,000 pounds of scallops was sold to a local dealer with the $57,000 check made out to the U.S. Government. No drugs, incidentally, were found in the captain's or the first mate's quarters.

That same week, the *Siddie Golden*, a 74-foot trawler was seized on the Newport River in North Carolina on its way to Morehead City for repairs. Only two men were aboard and that vessel is still seized and being held at the Fort Macon Coast Guard Station.

The *James T. Gillikin* was boarded near Wrightsville Beach, NC en route to its home port of Beaufort. Her owners were not on board and the vessel was placed under constructive seizure.

The NCFA took a very cautious approach when first hearing of this policy. After all, we did not want to give the media and the public the idea that we were condoning or ignoring the problem of drug use in the fishing industry.

But Captain Jimbo Ireland stopped in our office on Monday, May 9. He was not a member of our group, but was asking for whatever assistance we might be able to provide. He informed me that he had retained local counsel to work on the release of his vessel. Captain Jimbo and his first mate voluntarily submitted to drug tests which were negative.

Now I think it's important to note that Jimbo Ireland has one of the finest steel hull vessels in North Carolina, not only in looks—I have a couple of photographs here—but also in safety equipment. He also is known for his no-nonsense approach to drug use on board his vessel. As a matter of fact, he got into a bit of trouble a few years back for being very firm with a crew member found to be using drugs.

Captain Jimbo's payments on the *Lorraine Carol* are $33,000 every 3 months, and his insurance on the vessel is $30,000 a year. Thirteen families earn a living on that vessel. Prime scallop months are May, June, and July. So for every day that boat sat idle at Coast Guard Station Hobucken, many lives were affected through the loss of income. Try seizing a farmer's combine while his crop is ripe and ready for harvesting, and hear the outcry.

The *Lorraine Carol* was released on Monday, May 16, after dozens of phone calls and an attorney's bill of many thousands of dollars. As I was sitting in the wheelhouse with Jimbo and his wife, Lorraine, he handed me one of the bright red Customs seizure stickers for a souvenir. I have to admit a fleeting sense of accomplishment, a feeling of "the system works". Jimbo and Lorraine, as you would expect, were tickled pink to get their vessel back.

But on the way back to my office, I thought what in the world are we so happy about? This man was innocent of any wrongdoing. He cannot search his crew before they board his vessel—he was not found to have possession of drugs—he was not transporting drugs—

he tested clean for the drug test. But he lost his vessel for almost 2 weeks. Add the fishing time lost and his attorney's fees, and this innocent victim of this policy lost $50,000, and that is conservatively speaking.

The next day in the papers: a Customs spokesman in Miami in responding to questions about zero tolerance: "But it's also reasonable, fair and judicious. The fact that they got the boat back points out that we're willing to listen." That kind of attitude is like hitting your hand with a hammer, because it feels good when you stop. Guilty until proven innocent. Is this due process?

To close out on the *Lorraine Carol*: it took an extra week for the Irelands to have their $57,000 returned. Also, in reference to the "white powder", I have included a newspaper article that appeared last week. It is self-explanatory.

Mr. Chairman and members of the committee, the North Carolina Fisheries Association applauds the recent drug crackdown by the U.S. Coast Guard. However, the recent rash of vessel seizures goes way beyond what we consider a reasonable reaction to this very serious problem. Specifically, the assumption that a vessel captain knows of the personal habits and belongings of every crew member is not only false, but also impossible.

Let's punish those who are proven to be drug dealers and drug users, not punish those who are easy picking for law enforcement and make for political grandstanding in this election year.

We offer a positive solution. Talk to us. Problems are not solved with monolog. It takes dialog. Our industry, commercial fishing, is the most hazardous occupation in America. Because of that, we have more than just a passing concern to solve this problem of drug use.

So why can't we participate in a constructive process involving government and private groups? The question we must answer is this: Is the "bottom line" to make headlines and deceive the American public that this country is solving the drug problem? If it is, then continue with the present policy.

But if the bottom line is to reduce the amount of drug use in America, and in particular the fishing industry, then this policy must be modified to include industry participation. Talk to us. We are not the enemy in this war on drugs.

Thank you, Mr. Chairman.

Mr. HUTTO. Thank you, Mr. Schill.

I understand that before we wrap it up that, Mr. Horan, you had a quick comment that you wanted to make?

Mr. HORAN. Yes. The "owner on board equals seizure" which is what they are using right now is just plain dumb. What it means is that all of the owner captains are going to put their boat into corporate ownership, and that takes care of the "owner on board equals seizure" rule.

What I have been wrestling with over the past couple of months with regard to this case and some others is the fourth and sixth amendment considerations. What I can recommend is this. If there is probable cause to believe that the owner has knowledge of possession of personal use quantities, then seizure may very well be justified.

A post-deprivational hearing should be given within 72 hours in front of a judicial officer for such a probable cause determination. Then bond or further seizure could be invoked, and the judicial forfeiture goes forward. That's with probable cause to believe that the owner has knowledge of those quantities on board even for personal use.

Now if it is the crew, and if it is personal use on the crew and no probable cause to believe that the captain or owner has knowledge of its existence on board, then charge that person with it, but don't deprive presumably innocent American citizens of their property and their livelihood.

That is commonsense that Mr. von Raab can take back to Customs with him, and hopefully he can constitutionally implement it.

Mr. HUTTO. Thank you, Mr. Horan.

Mr. Putnam, Mr. Jones, Mr. Schill, and Mr. Phelps, we thank you all for being here. This is helpful to our committee. We are hoping that it is going to be helpful to the Customs and Coast Guard as well. Thank you for being with us.

Mr. PHELPS. Can I make another statement please?

Mr. HUTTO. Yes, sir, Mr. Phelps.

Mr. PHELPS. When they confiscated my boat, they confiscated my books, my readings, my charts. These are electronic ways of mapping out the bottom to find where to drag out. This is a period of 10 years it took me to perfect these charts.

I asked U.S. Customs why I couldn't have my charts so I could at least go back to work until my boat was returned or whatever. They refused me even to giving me my charts back where I could even go to work.

Mr. HUTTO. All right, sir. I have one final suggestion to you. I think Congressman Dante Fascell would be happy to make a contact for you.

Mr. PHELPS. OK.

Mr. HUTTO. Thank you all.

Mr. PHELPS. Thank you.

Mr. HUTTO. The final panel, Mr. Antonio J. Califa, legislative counsel, American Civil Liberties Union, Prof. William Greenhalgh of Georgetown University Law School.

Mr. Califa, we are ready for your testimony.

STATEMENT OF ANTONIO J. CALIFA, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. CALIFA. Good afternoon, Mr. Chairman, and members of this distinguished subcommittee.

Mr. Chairman, we commend you for holding these hearings on this important national issue so expeditiously. I would respectfully ask that my statement be included in the record in its entirety.

Mr. HUTTO. Your prepared statement will appear in the record.

Mr. CALIFA. From the numbers of phone calls and letters we have received on zero tolerance, we can assure you that the public is angry and upset. Zero tolerance makes zero sense.

The administration should try and stop large-scale drug smuggling. Instead, they look for traces of drugs on fishing boats. If

traces are found, the boat is confiscated, and some people are left without a livelihood.

To effectively fight this war on drugs, the administration should concentrate its drug enforcement resources on attacking smuggling. Instead, it has launched a cheap publicity gimmick.

In launching this program, it is availing itself of an extremely powerful tactic, and that is civil forfeiture. This tactic hurts citizens who have nothing to do with drug smuggling, including many who do not even use drugs. These citizens, some accused of misdemeanors, and some who are totally innocent, face forfeiture proceedings which could ruin their lives.

Now we have examined this zero tolerance program and how it was expanded by the attorney general on March 30, 1988. What the attorney general did was expand a regional program that was in place in San Diego. The salient point in this expansion was the use of this civil forfeiture provision. The attorney general emphasized that the Anti-Drug Abuse Act of 1986 allowed Federal prosecutors to use new and very powerful tools. I am quoting from his memo: "This law permits law enforcement officers to seize and forfeit any conveyance carrying drugs, even in trace amounts."

So boat and car owners are now in a great predicament. The Federal Government can take their vehicle away if a trace of a controlled substance or drug paraphernalia is found in it.

Mr. HUTTO. Mr. Califa, we know that. Do you have testimony to say that this is unconstitutional or something like that? I guess that that's what you want to put into the record.

Mr. CALIFA. Yes.

Mr. HUTTO. I am assuming you have all of that in your statement. If you could be as brief as you can.

Mr. CALIFA. Yes, I will be brief. I would like, if I could, to cite one example. I have many, but I will cite one example of a case that one of our affiliates has been asked to take on. This case, Government agents boarded a houseboat that was owned by Vietnamese refugees that they were living on. They found a small amount of marijuana, caused a great deal of damage to the boat, seized and forfeited the boat and all household goods. So in effect, these people were deprived of their livelihood and their home at the same time.

Mr. Chairman, our concerns with the constitutionality and the legality and the fairness of the zero tolerance program revolve around two major issues. That is, the short circuiting of criminal procedures. You are well aware of the entire panoply of rights that criminal defendants are entitled to. So I won't go into them.

Mr. HUTTO. Yes. Let me point out, you know, we are the Subcommittee on Coast Guard and Navigation. We are not the Judiciary Committee. So we don't have any jurisdiction in that area whatsoever.

Mr. CALIFA. Yes, Mr. Chairman.

What I would like to point out is that this civil forfeiture procedure is a very deliberate attempt to get around the higher standards of proof required in criminal proceedings, and the protections that are afforded criminal defendants. In my testimony I have cited the Drug Agent's Guide to Forfeiture of Assets which is published by the Department of Justice which tells drug agents directly,

cards right out on the table, don't go after people criminally, seize their assets. Go after them under this 21 U.S.C. 881.

Mr. HUTTO. OK. We will, as I said, admit—I'm sorry, we are running out of time. We will make sure—Mr. Hughes is Chairman of the Crime Subcommittee. We will make sure that he gets seizure testimony.

Mr. CALIFA. Thank you very much for the opportunity to be here, Mr. Chairman.

[The prepared statement of Mr. Califa may be found at the end of the hearing.]

Mr. HUTTO. Thank you, Mr. Califa, for being here.

Professor, we appreciate your being here. If you could just paraphrase.

STATEMENT OF PROF. WILLIAM GREENHALGH, GEORGETOWN UNIVERSITY LAW SCHOOL

Mr. GREENHALGH. I have no full statement. I had 48 hours notice to appear here. I've done the best I can. I have a few observations that may be helpful.

Mr. HUTTO. Yes, sir. I would appreciate it.

Mr. GREENHALGH. You have been very patient. I've been here the whole time. Believe me, this is one of the lengthiest hearings I've heard in a long, long time.

Mr. HUTTO. It certainly is. A lot of people have strong feelings on the issue.

Mr. GREENHALGH. A couple of things, Mr. Chairman. The admiral mentioned the two magic words which I have heard not at all today, and that's the two words "probable cause" which is the warrant clause of the fourth amendment dealing with once they appear to have the authority to go on board, as to whether or not they have probable cause to search the entire vessel.

I suggest to you a thorough reading of a 1927 case called *Maul* written by Justice Willis VanDevanter, who was hardly a flaming liberal at that time—you can find that at 274 U.S—talking in terms of another case which was decided a few years earlier about the illegality of activities on board a vessel. It should be taken into consideration with regard to the seizure of the vessel.

The interesting thing about that case is Justice Brandeis concurring with Justice Holmes, compared warrantless seizures of vessels on the seas to common law seizures of individuals, which means they both must be based on probable cause.

I suggest you can find in the concurring opinion at page 524–525 that kind of strong language.

Second, I am sorry Mr. Studds is still not here, it appears that in 1936 because of the Maul decision, 14 U.S.C. 89 was amended to give the Coast Guard full authority to go beyond the 12-mile limit for searches and seizures. Remember, he got in the argument about 12½ and 11½ on that.

Mr. HUTTO. Yes, sir.

Mr. GREENHALGH. It seems to me the DOT and the general counsel's office now has decided well, we've got the authority, but because of certain publicity we had better pull back with regard to whether we are going to exercise that discretion or that authority

to proceed beyond the 12-mile limit. But they have the authority, there is no question about that.

Mr. HUTTO. That is interesting information. I appreciate that.

Mr. GREENHALGH. Now a couple of other things. A fishing boat, from what I've heard this morning, is a workplace, it's a place of business. If that fishing boat is at dockside, immobilized, why can't you drop a bill into the hopper to require a search warrant for that particular vessel, which is no longer mobile. We are not talking about border searches or something on the high seas or something like that.

Rule 41 of the Federal Rules of Criminal Procedure will take care of this problem because it will have to show probable cause and particularity in that search warrant to board that vessel which is immobilized at dockside. I'm sorry that Mr. Hughes isn't here because he is a member of the Judiciary Committee. I have appeared before him many, many times in another capacity. But that is something which would be positive—that would stop all this business at dockside anyway, because that would be a very positive step based on what you have heard here. That is rather outrageous conduct on the part of both Customs and the Coast Guard.

So I will leave you with the authority for a search warrant and the fact that a boat could be a place of business. That is G.M. Leasing, General Motors Leasing, Inc. You can find that 429 United States, a case decided in 1977.

As to Mr. Davis' problem from Canada over to Michigan, he is stuck. That's a border search under the *Carroll* case of 1925 which you can find under 267 U.S. That is an exception to the warrant clause. There is not much he can do about that.

One last thing. It is clear that the Supreme Court of the United States in 1965 decided unanimously, with Justice Goldberg writing the opinion, that the fourth amendment exclusionary rule adopted in the Federal system in 1914 in Weeks against United States and then became the law of the land in Mapp against Ohio in 1961, applies to forfeiture proceedings; it is absolutely clear. So if there is lack of probable cause or an illegal search and seizure, as to forfeiture of that conveyance, that vehicle, that aircraft, that vessel, or whatever it is, you can go to a court and have that forfeiture turned aside because of the illegality committed by either State or Federal officials. The name of that case, peculiarly enough, is One 1958 Plymouth Sedan against Pennsylvania, which you can find in 380 U.S. It was decided in 1965.

So I don't know if any of this is helpful, but it seems to me that you've got some remedies here with a little bit of legislation to amend some of these things to shake these people up.

Mr. HUTTO. Very interesting comments. We do appreciate your patience, both you, Mr. Greenhalgh, and you, Mr. Califa. Thanks very much for your statements here today.

I think as we come to the conclusion there are two things that are very clear from the testimony that we've heard today. First, it is absolutely mandatory that owners and captains of vessels are provided guidelines, as we mentioned earlier, on what they must do to show a good faith effort that they have done everything that can reasonably be expected of them to keep their vessels drug free.

I was pleased to hear that Coast Guard and Customs intend to do this very soon. I ask that copies be sent to members of the subcommittee. I also hope the administration has learned a lesson on this issue and will not implement new policies in the future until information is made available to the public so that people can take steps to protect themselves.

The second thing I believe must be done is to establish a policy that protects innocent owners, captains and crew members from the loss of livelihood because of the actions of one inconsiderate person who may be or may not be a criminal. Whether it is called constructive seizure or something else, a policy is badly needed that will permit these innocent people to continue to earn a living. If we do not see this move or a move in this direction, then Congress may very well take some action.

With that, the Subcommittee on Coast Guard and Navigation stands adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

[The following was received for the record:]

STATEMENT OF CONGRESSMAN
OWEN B. PICKETT
BEFORE THE SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION
MAY 26, 1988

MR. CHAIRMAN:

THE ZERO TOLERANCE DRUG POLICY REFLECTS ALMOST UNANIMOUS PUBLIC SUPPORT FOR STRONGER ENFORCEMENT OF OUR NATION'S DRUG LAWS AND BETTER MEASURES TO DETER PEOPLE FROM USING OR EXPERIMENTING WITH ILLEGAL SUBSTANCES. AS THE SUBCOMMITTEE WELL KNOWS, THIS POLICY CAN BE A VERY BLUNT INSTRUMENT. THE OWNER OF A BOAT CAN HAVE HIS OR HER VESSEL SEIZED WHEN COAST GUARD OR CUSTOMS OFFICIALS DISCOVER ANY MEASURABLE QUANTITY OF DRUGS ON BOARD THE VESSEL.

IN LIGHT OF THE STAGGERING COSTS OF DRUG ABUSE IN THE UNITED STATES, IT IS HARD TO FIND FAULT WITH ANY LAW OR ADMINISTRATIVE POLICY THAT IS DESIGNED TO DELIVER SWIFT AND CERTAIN PUNISHMENT TO DRUG USERS AND TRAFFICKERS.

AT THE SAME TIME, HOWEVER, WE NEED TO BE MINDFUL OF CONSTITUTIONAL PROVISIONS WHICH FOR 200 YEARS HAVE GUARANTEED DUE PROCESS AND OTHER PROTECTIONS TO THOSE ACCUSED OF EVEN THE MOST SERIOUS CRIMES. WHETHER ZERO TOLERANCE IS CONSISTENT WITH THESE PROTECTIONS -- PARTICULARLY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT -- IS SOMETHING THIS SUBCOMMITTEE SHOULD EXAMINE THIS MORNING. I WOULD ALSO HOPE THAT WE CAN EXAMINE THE POLICY OF CONSTRUCTIVE SEIZURE, WHICH PERMITS OWNERS OF FISHING VESSELS AND SIMILAR WORKING CRAFT TO CONTINUE IN THEIR LINE OF WORK UNTIL SUCH TIME AS A JUDICIAL DETERMINATION IS MADE THAT THERE HAS BEEN A VIOLATION OF THE LAW.

STATEMENT OF

WILLIAM von RAAB

COMMISSIONER

BEFORE THE

HOUSE OF REPRESENTATIVES

MERCHANT MARINES AND FISHERIES

SUBCOMMITTEE ON

COAST GUARD AND NAVIGATION

MAY 26, 1988

89-225 0 - 88 - 3

ZERO TOLERANCE HAS BECOME A NEW THEME OF FEDERAL ANTI-DRUG EFFORTS. THE CUSTOMS SERVICE HAS INITIATED THE EXPANSION OF THIS CONCEPT AND I AM PROUD OF OUR LEADERSHIP ROLE ON THIS ISSUE. SOME OF THE RECENT MEDIA REPORTS, UNFORTUNATELY, HAVE NOT ACCURATELY PORTRAYED THIS IMPORTANT EFFORT.

ZERO TOLERANCE MEANS THAT WE ARE NOT GOING TO ACCEPT THE IMPORTATION AND EXPORTATION OF ILLICIT DRUGS IN ANY MEASURABLE AMOUNT, ANY PLACE, OR AT ANY TIME! PREVIOUSLY, SMALL AMOUNTS OF DRUGS, WHEN DISCOVERED BY LAW ENFORCEMENT OFFICERS, WERE EITHER OVERLOOKED OR VIOLATORS WERE PERMITTED TO PAY A SMALL FINE. IN ADDITION, THERE WERE SUBSTANTIALLY DIFFERENT ENFORCEMENT AND PROSECUTION PRACTICES EXISTING THROUGHOUT THE COUNTRY. IN SOME LOCATIONS, VIOLATORS WERE TREATED WITH GREAT LENIENCY. IF WE ARE GOING TO GET SERIOUS ABOUT OUR ANTI-DRUG EFFORT, WE MUST DEAL WITH ALL VIOLATORS. DRUG USERS WHO POSSESS SMALL QUANTITIES OF DRUGS ARE A MAJOR SOURCE OF THE PROBLEM BECAUSE THEY CREATE THE DEMAND. OUR EFFORTS MUST NO LONGER IGNORE THESE INDIVIDUALS WHO ARE THE UNDERLYING CAUSE OF THE DRUG EPIDEMIC.

ZERO TOLERANCE IS ONE ASPECT OF A "USER FOCUS" STRATEGY WHICH PRESIDENT REAGAN HAS BEEN CALLING FOR SINCE 1981 WHEN HE INITIALLY LAUNCHED A COMPREHENSIVE CAMPAIGN AGAINST DRUG ABUSE. ZERO TOLERANCE, WHICH MEANS THAT THE USE OF ILLICIT DRUGS AND THE ABUSE OF LEGAL DRUGS CAN NO LONGER BE TOLERATED, AND WHICH IS NOW A POLICY APPROVED BY THE NATIONAL DRUG POLICY BOARD, AND WILL HAVE MANY COMPONENTS. ONE COMPONENT WAS ORIGINALLY DEVELOPED BY THE U.S. CUSTOMS SERVICE IN CONJUNCTION WITH THE U.S. ATTORNEY IN

SAN DIEGO, AS A LEGAL INITIATIVE TO STOP DRUG TRAFFICKING IN ALL AMOUNTS COMING ACROSS THE MEXICAN BORDER IN SAN DIEGO. ALL INDIVIDUALS WHO ARE FOUND IN POSSESSION OF ILLICIT DRUGS AS THEY CROSS THE BORDER ARE CHARGED WITH A MISDEMEANOR AND A FELONY OFFENCE. THE U.S. ATTORNEY OFTEN ACCEPTS GUILTY PLEAS TO THE MISDEMEANOR OFFENSE FOR SMALL QUANTITIES OF DRUGS. VIOLATORS, IN THIS CATEGORY, ARE OFTEN SENTENCED TO COMMUNITY SERVICE WORK. THIS PROGRAMS HAS NOT CAUSED SUBSTANTIAL ADDITIONAL WORKLOAD ON THE U.S. ATTORNEY IN SAN DIEGO, THE JUDICIAL SYSTEM, OR LAW ENFORCEMENT OFFICIALS BECAUSE OF THE HIGH RATE OF GUILTY PLEAS.

BECAUSE OF THE PROGRAM'S SUCCESS IN THE SAN DIEGO DISTRICT, I PRESENTED THE PROGRAM TO THE NATIONAL DRUG POLICY BOARD AND RECEIVED AN ENTHUSIASTIC UNANIMOUS ENDORSEMENT FOR NATIONWIDE APPLICATION. THE CUSTOMS SERVICE ZERO TOLERANCE PROGRAM WAS IMPLEMENTED ON MARCH 21, 1988, AT ALL U.S. PORTS OF ENTRY. A SIMILAR PROGRAM WAS RECENTLY IMPLEMENTED BY THE COAST GUARD. THE ATTORNEY GENERAL HAS COMMUNICATED TO THE U.S. ATTORNEYS, THE IMPORTANCE OF THE PROGRAM AND ITS PRIORITY. THE ZERO TOLERANCE PROGRAM IS NOW CENTERED AT AND AROUND THE U.S. BORDERS, BUT IT MAY HAVE APPLICATIONS IN LOCATIONS THROUGHOUT THE UNITED STATES.

UNDER THE CUSTOMS PROGRAM, THE GUIDING PRINCIPLE IS TO SECURE CRIMINAL PROSECUTION OF EVERY INDIVIDUAL WHO ATTEMPTS TO SMUGGLE DANGEROUS DRUGS ACROSS OUR BORDERS, IN ANY MEASURABLE AMOUNT. THROUGH THIS HARD LINE APPROACH WITH PERSONAL QUANTITY USERS, A MESSAGE WILL BE SENT TO TRAFFICKERS AND SUPPLIERS THAT THEY WILL NO LONGER HAVE A PLACE TO PEDDLE THEIR WARES. OUR SEARCH PRACTICES HAVE NOT CHANGED; WE ARE STILL LOOKING FOR MAJOR DRUG SMUGGLERS. IN FACT WE HAVE BROKEN OUR RECORD FOR THE LARGEST SEIZURE OF COCAINE THREE TIMES IN THE LAST SIX MONTHS! LESS THAN A MONTH AGO WE SEIZED OVER 9,200 POUNDS OF COCAINE IN ONE SHIPMENT. WHAT MAKES ZERO TOLERANCE DIFFERENT IS THAT WHEN WE FIND AN INDIVIDUAL WITH A SMALL QUANTITY OF DRUGS, HE IS ARRESTED AND CHARGED RATHER THAN SIMPLY FINED.

ANYONE COMMITTING A ZERO TOLERANCE DRUG INFRACTION IS CHARGED WITH VIOLATING 21 USC 952, A FELONY IMPORTATION COUNT, AND 21 USC 844, A MISDEMEANOR POSSESSION COUNT. IF THE INDIVIDUAL PLEADS GUILTY TO THE MISDEMEANOR, THE FELONY CHARGE IS DISMISSED AND THE INDIVIDUAL IS FINED, IMPRISONED, PLACED ON PROBATION, PLACED IN A DRUG TREATMENT PROGRAM OR ASSIGNED TO A COMMUNITY SERVICE. WE BELIEVE THIS PROVIDES A TOUCH, FAIR, AND JUDICIOUS APPROACH WITHIN THE ZERO TOLERANCE FRAMEWORK.

IN ADDITION TO THE CRIMINAL PENALTIES, THE CUSTOMS SERVICE SEEKS, UNDER 19 USC 1595A AND OTHER APPLICABLE FEDERAL LAWS, CIVIL FORFEITURE OF ANY CONVEYANCE USED TO BRING DRUGS INTO THE UNITED STATES. WHILE CUSTOMS ADMINISTRATIVE FORFEITURE PROCEEDINGS ARE APPLICABLE TO CONVEYANCES SEIZED FOR IMPORTING, EXPORTING, TRANSPORTING OR STORING ANY CONTROLLED SUBSTANCE, THESE PROCEDURES ALSO GUARANTEE THAT THE OWNER, LIENHOLDER OR OTHER INTERESTED PARTY IS AFFORDED DUE PROCESS OF LAW. NOTICE OF THE INTENT TO FORFEIT SUMMARILY AND DISPOSE OF THE PROPERTY IS PROVIDED TO INTERESTED PARTIES. INDIVIDUALS MAY PETITION FOR REFUNDS OF PROCEEDS FROM THE SALE OF SEIZED AND FORFEITED CONVEYANCES. OWNERS AND LIENHOLDERS NOT IN POSSESSION OF THE CONVEYANCE AT THE TIME OF THE VIOLATION MAY PETITION FOR RETURN OF THE CONVEYANCE AND PRESENT EVIDENCE OF REASONABLE STEPS TAKEN AS INNOCENT OWNERS TO PREVENT THE PROSCRIBED USE OF THE CONVEYANCE. THE LAW ALSO PROTECTS COMMON CARRIERS WHEN DRUGS ARE UNLAWFULLY TRANSPORTED. AN INTERESTED PARTY ALSO RETAINS THE RIGHT TO FILE A CLAIM AND COST BOND, WHICH SUSPENDS THE SUMMARY FORFEITURE PROCEEDINGS, AND THE CASE IF REFERRED TO THE U.S. ATTORNEY FOR THE INSTITUTION OF JUDICIAL FORFEITURE PROCEEDINGS. THUS, CUSTOMS ADMINISTRATIVE PROCEEDINGS OFFER THE OWNER VARIOUS AVENUES OF REDRESS AS WELL AS THE OPPORTUNITY TO CONTEST THE FORFEITURE.

I KNOW THAT THE DRUG PROBLEM IS THE NUMBER ONE CONCERN OF OUR CITIZENS, AND THAT YOU AS AN ELECTED OFFICIAL ARE RESPONDING TO THIS AND EXPECT RESPONSIBLE GOVERNMENT OFFICIALS TO DO THE SAME. IT IS NOW CLEAR THAT OUR EFFORTS TO COMBAT THE MAJOR DRUG TRAFFICKERS ARE NOT ENOUGH; WE MUST ALSO DEAL WITH SMALL DISTRIBUTORS AND NARCOTICS USERS. THE USERS ARE A ROOT CAUSE OF THE PROBLEM AND MUST PERSONALLY FEEL THE IMPACT OF THE WAR ON DRUGS. ZERO TOLERANCE IS THE FIRST OF MANY INITIATIVES TO IMPACT ALL INDIVIDUALS IN THE NARCOTICS CHAIN WHETHER THEY ARE MAJOR DISTRIBUTORS, SMALL TIME TRAFFICKERS, OR USERS. THE PROGRAM IS DESIGNED TO PUNISH THOSE INVOLVED IN THE ILLEGAL DRUG TRADE, WHILE STILL PROVIDING EFFECTIVE METHODS OF DUE PROCESS FOR THOSE ACCUSED OF THESE CRIMES. THE CUSTOMS SERVICE WILL CONTINUE TO DO EVERYTHING WITHIN ITS POWER, WITHIN THE LAW, TO RAISE THE HEAT IN THE STRUGGLE AGAINST ILLEGAL DRUGS.

IT HAS BEEN SAID THAT "HE THAT IS NOT WITH ME IS AGAINST ME." ZERO TOLERANCE DRAWS THE LINE IN THE DUST WITH DRUG SMUGGLERS, DRUG USERS, AND INDIFFERENT OBSERVERS ON ONE SIDE AND AN ENERGIZED AND OUTRAGE AMERICAN PUBLIC DETERMINED TO WIN THE WAR ON DRUGS ON THE OTHER. THERE CAN BE NO NEUTRALITY IN THE WAR ON DRUGS. IF WE FAIL TO MEASURE UP, IF WE ARE UNWILLING TO PAY THE PRICE, IF WE LACK THE COMMITMENT AND THE RESOLVE, THEN WE ARE NEGLECTING OUR RESPONSIBILITY TO PROTECT OUR CHILDREN'S FUTURE FROM THE RAVAGES OF DRUGS.

U.S. Department
of Transportation
United States
Coast Guard

Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol:
Phone:

PREPARED STATEMENT

OF

ADMIRAL P. A. YOST
UNITED STATES COAST GUARD

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, IT IS A PLEASURE TO APPEAR BEFORE YOU TODAY TO ADDRESS THE COAST GUARD'S EFFORTS UNDER THE ADMINISTRATION'S ZERO TOLERANCE/USER PROSECUTION INITIATIVE.

THE COAST GUARD HAS IMPLEMENTED THE NATIONAL DRUG POLICY BOARD'S COMBINED ZERO TOLERANCE INITIATIVE IN AN EFFORT TO INCREASE ITS ENFORCEMENT PRESENCE DURING THE COURSE OF NORMAL COAST GUARD LAW ENFORCEMENT BOARDINGS. DURING OUR LAW ENFORCEMENT ACTIVITIES, WE ARE NOW TAKING STEPS TO IDENTIFY AND TAKE APPROPRIATE ACTION AGAINST SUSPECTED DRUG USERS. IT IS IMPORTANT TO NOTE THE ZERO TOLERANCE/USER PROSECUTION INITIATIVE IS NOT A NEW CONCEPT CREATED SOLELY FOR COAST GUARD INTERDICTION OPERATIONS. THIS POLICY OF STRICT ENFORCEMENT WAS APPROVED IN MARCH 1988 BY THE NATIONAL DRUG POLICY BOARD. IT IS A PROGRAM BEING IMPLEMENTED BY ALL FEDERAL DRUG ENFORCEMENT AGENCIES. ZERO TOLERANCE REFERS TO A POLICY OF STRICT ENFORCEMENT OF OUR NATION'S ALREADY EXISTING DRUG LAWS -- NOT A NEW LAW.

THE COAST GUARD ZERO TOLERANCE POLICY IS THAT, SUBJECT TO STATUTORY AND JURISDICTIONAL LIMITATIONS, INDIVIDUALS POSSESSING MEASURABLE QUANTITIES OF CONTROLLED SUBSTANCES ABOARD VESSELS WILL BE SUBJECT TO THE FULL EXTENT OF AVAILABLE CRIMINAL AND CIVIL SANCTIONS. IN CASES OF SOLE FEDERAL JURISDICTION, INDIVIDUALS ARRESTED AND VESSELS SEIZED WILL BE REFERRED TO DEPARTMENT OF JUSTICE AND/OR CUSTOMS OFFICIALS FOR PROSECUTION AND FORFEITURE ACTION. IN CASES OF CONCURRENT FEDERAL/STATE JURISDICTION, MY COMMANDERS MAY EXERCISE DISCRETION IN REFERRING THE MATTER TO EITHER FEDERAL OR STATE OFFICIALS BASED ON THE PARTICULAR CIRCUMSTANCES OF THE ARREST AND/OR SEIZURE ACTION.

ALTHOUGH ZERO TOLERANCE SPECIFICALLY APPLIES TO ALL CONVEYANCES, INCLUDING AIRCRAFT, VEHICLES AND VESSELS, ENFORCING ZERO TOLERANCE WILL NOT CHANGE THE COAST GUARD'S PRIMARY EMPHASIS ON THE INTERDICTION OF SMUGGLERS, OR WILL IT REQUIRE ANY CHANGE IN THE NORMAL DEPLOYMENT OF COAST GUARD SHIPS AND AIRCRAFT. ZERO TOLERANCE MEANS THAT THE COAST GUARD, IN THE COURSE OF ITS REGULAR PATROLS, BOARDING AND INSPECTIONS, WILL NOW, WITHIN THE LIMITS OF THE LAW, SEIZE VESSELS AND ARREST INDIVIDUALS WHEN "PERSONAL USE" QUANTITIES OF ILLEGAL DRUGS ARE DISCOVERED. IN CASES WHERE IT WOULD BE UNWISE TO TIE UP A COAST GUARD RESOURCE IN ESCORTING THE VESSELS TO PORT, THE SUSPECTED VESSEL WILL BE SEIZED AND DIRECTED TO PROCEED TO PORT TO REPORT TO U.S. CUSTOMS OR COAST GUARD AUTHORITIES, WHO WILL BE NOTIFIED TO EXPECT THE VESSEL'S ARRIVAL FOR INITIATION OF APPROPRIATE ENFORCEMENT PROCEEDINGS. ZERO TOLERANCE WILL EFFECTIVELY COMPLEMENT THE COAST GUARD'S ROLE IN THE INTERDICTION OF DRUGS BEING SMUGGLED INTO THE U.S. BY AIR OR SEA.

VESSEL OWNER CONCERNS OVER SEIZURE OF THEIR VESSELS WHEN THEY CLAIM NO KNOWLEDGE OF "PERSONAL USE" QUANTITIES OF DRUGS ABOARD ARE UNDERSTANDABLE. HAVING BEEN SEIZED BY THE COAST GUARD, THE VESSELS ARE TURNED OVER TO THE CUSTOMS SERVICE, WHICH IS THE FEDERAL AGENCY RESPONSIBLE FOR DISPOSITION OF THE SEIZED PROPERTY. CUSTOMS HAS DEVELOPED AN ADMINISTRATIVE PROCEDURE BY WHICH THE OWNER CAN PRESENT EVIDENCE TO ESTABLISH THAT HE WAS AN INNOCENT PARTY AND TOOK REASONABLE STEPS TO PREVENT THE VESSEL FROM BEING USED IN VIOLATION OF THE LAW. FURTHER, CUSTOMS HAS BROAD DISCRETION IN THESE CASES AND CAN IMPOSE A RANGE OF CIVIL PENALTIES AS DICTATED BY THE CIRCUMSTANCES. IF THE OWNER IS SUCCESSFUL IN MEETING THIS BURDEN IT IS CUSTOMS' POLICY TO RETURN

THE VESSEL. IF HE IS UNABLE TO SUSTAIN HIS BURDEN OF PROOF, AN APPROPRIATE PENALTY, UP TO FORFEITURE OF THE VESSEL, WILL BE APPLIED.

COMMON CARRIERS, SUCH AS FERRY BOATS AND CRUISE SHIPS ARE HANDLED DIFFERENTLY, AND UNDER DIFFERENT LAWS THAN PLEASURE CRAFT OR FISHING VESSELS. COMMON CARRIERS ARE GENERALLY PROTECTED FROM FORFEITURE UNLESS THERE IS EVIDENCE THAT THE OWNER, MASTER, OR OTHER PERSON IN CHARGE WAS GROSSLY NEGLIGENT IN PREVENTING THE VIOLATION, KNEW OR COULD HAVE KNOWN THAT DRUGS WERE ABOARD, OR MAY HAVE EITHER FACILITATED OR ACQUIESCED IN THEIR PRESENCE OR USE.

SECRETARY BURNLEY AND I BELIEVE THERE IS NO QUESTION THAT THIS POLICY WILL INCONVENIENCE INDIVIDUALS THAT HAVE ILLEGAL DRUGS ON THEIR BOATS. WE HOPE THE THOUGHT OF THIS INCONVENIENCE WILL DETER THESE PEOPLE FROM HAVING OR USING ILLEGAL DRUGS ON THEIR VESSELS. CONTRARY TO SOME ASSERTIONS, BOAT OWNERS WILL IN NO WAY BE DEPRIVED OF THEIR DUE PROCESS RIGHTS BY ENFORCEMENT EFFORTS UNDER THE ZERO TOLERANCE INITIATIVE. THE CIVIL FORFEITURE STATUTES HAVE BEEN JUDICIALLY UPHELD IN THE COURTS AS AFFORDING THE FAIRNESS REQUIRED BY LAW AND BY THE CONSTITUTION.

MR. CHAIRMAN, COAST GUARD BOARDINGS ARE INTENDED TO SERVE THE BEST INTERESTS OF THE MARITIME COMMUNITY AND THE ENTIRE NATION, WITH MINIMUM INCONVENIENCE TO THE LARGE BODY OF LAW ABIDING CITIZENS WHO WANT TO ENJOY THE RICHNESS OF OUR WATERS. OUR INTENTION IS TO PROMOTE A SAFE, SECURE, AND ENJOYABLE ENVIRONMENT FOR ALL. SAFETY ON OUR NATION'S WATERWAYS REQUIRES THAT THOSE WHO OPERATE VESSELS NOT HAVE THEIR ABILITIES IMPAIRED

BY DRUGS. ILLEGAL DRUGS HAVE NO PLACE IN THE MARINE ENVIRONMENT. I FULLY SUPPORT THE NATIONAL DRUG POLICY BOARD'S LEADERSHIP ROLE IN THE DEVELOPMENT OF THE ZERO TOLERANCE INITIATIVE AND BELIEVE IT IS AN IMPORTANT TOOL FOR LAW ENFORCEMENT IN THE TOTAL WAR ON DRUGS.

THIS CONCLUDES MY PREPARED STATEMENT, I WILL BE HAPPY TO ANSWER ANY QUESTIONS.

TESTIMONY OF

ROBERT P. JONES
EXECUTIVE DIRECTOR
SOUTHEASTERN FISHERIES ASSOCIATION, INC.

Regarding

THE ADMINISTRATION'S "ZERO TOLERANCE" ANTI-DRUG POLICY

Presented To

THE SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
Of The
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Washington, D.C.
May 26, 1988

Good morning. I am Robert P. Jones, Executive Director of Southeastern Fisheries Association, Inc. ("SFA"). I am pleased to appear before the Subcommittee today to discuss the impact of the Administration's "zero tolerance" anti-drug policy, as implemented by the U.S. Coast Guard, on the commercial and charterboat fishing fleet in the South Atlantic and the Gulf of Mexico.

SFA, which is headquartered in Tallahassee, Florida 1/, is the largest commercial fisheries trade association in the southeastern United States. It has more than 400 members from all sectors of the commercial fishing industry from North Carolina to Texas. Many of SFA's members are owners and operators of commercial fishing vessels, engaged in such diverse fisheries in the region as those for mackerel, snapper-grouper, scallops, lobster and shrimp. SFA also represents charterboat operators in the Southeast.

SFA, as a trade association, and the fishing industry, as a whole, are appalled by the growing drug traffic in this country and abhor the harm that drugs cause on a daily basis to the American people. I further believe that the fishing industry is fully committed to stemming the flow of illegal drugs into the United States. However, the zero tolerance

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1/ SFA's address and telephone number are:

Southeastern Fisheries Association, Inc.
312 East Georgia Street
Tallahassee, Florida 32301
(904) 224-0612

policy, which can sweep many innocent fishermen up into the law enforcement net, is not an effective, sensible or fair way to go about solving the drug problem.

First, zero tolerance is not likely to achieve the objective of halting drug smuggling. Seizure of gram quantities of marijuana aboard legitimate fishing vessels is simply going to do nothing to deter the serious drug smuggler. Regardless of zero tolerance, the real smuggler knows that, if he is caught, his vessel will be seized and forfeited. Drug smugglers appear plainly willing to take such a risk because of the enormous profits involved in the drug trade. If anything, an indiscriminate seizure policy would appear to deflect the Coast Guard's attention away from the true illegal traffickers, thus making the introduction of drugs into the United States less, instead of more, difficult.

Second, the zero tolerance policy unquestionably impacts unfairly on innocent vessel owners and operators. Many owners require their crew to take urine tests and sign forms declaring they do not use drugs. Owners, however, cannot perform body searches on people working on their vessels, nor can charterboat operators frisk all their paying passengers in pursuit of illegal drugs. With thousands of vessels in the Gulf and South Atlantic and tens of thousands of fishermen, it is obviously impossible to prevent someone from bringing a marijuana cigarette on board in his personal belongings. In such circumstances, where an owner or

operator has no knowledge of illegal drugs on board his vessel -- and, as a practical matter, has no way of having any such knowledge -- it is patently unfair to confiscate a vessel.

Third, the zero tolerance policy can result in inappropriate treatment of law-abiding crew members. It is no small matter to be boarded and searched by the Coast Guard, and searches can be humiliating and demeaning. It does little to enhance the rule of law when innocent fishermen are effectively treated as criminals on the basis of nothing more than a random boarding policy. I, for one, do not believe the Fourth Amendment ceases to be operative at the water's edge.

Fourth, seizure is an excessive penalty when only small amounts of illegal drugs for personal use are found on board a vessel. Commercial fishing vessels and charterboats are often worth hundreds of thousands of dollars. They are now being seized if there is so much as a trace of marijuana residue on the deck. This result is fundamentally at odds with the principle engrained in our criminal justice system that punishment should be proportionate to the crime.

Fifth, and finally, even if, after seizure, a vessel is returned to its lawful owner, there are substantial transaction costs associated with the seizure in the first instance. Most important, the owner, usually a small businessman, loses fishing time and thus is deprived of his livelihood during that period. The policy thus has harsher

impacts on the commercial fisherman than, for example, on the recreational boater. Moreover, in order to get the vessel back, the owner may be forced to go through an expensive administrative and/or judicial process. Such burdens have little apparent connection to the objectives of drug enforcement policy.

I recognize that this past Monday the Administration announced that it was abandoning its policy of seizing boats in international waters merely because they carry small amounts of illegal drugs. Nonetheless, as I understand it, the zero tolerance policy will still continue to be applied within the twelve mile limit of U.S. territorial waters. Since much commercial and charterboat fishing occurs within twelve miles, the policy will therefore still put the commercial fisherman and charterboat operator at risk. The entire zero tolerance policy, in our judgment, needs to be rethought. SFA and its members are prepared to cooperate with the Government in every possible way to address the drug problem in a meaningful fashion, but zero tolerance as now applied against the fishing industry, we submit, is not the way to do it.

Mr. Chairman, that concludes my prepared statement. I would be pleased to answer any questions that you may have.

ORGANIZED FISHERMEN OF FLORIDA
P.O. BOX 740, MELBOURNE, FL 32902-0740
(305) 725-5212

Incident which occurred on May 7, 1988
Vessel AGAPE, Captain Russell D. Moore vessel owned by Captain Moore's father William. Neither Bill Moore or his son Russell have ever been found to have any drugs in their possession nor have they ever even been accused.

Captain Moore indicated to me that this vessel and his previous vessel have been searched between 20 and 30 times in the past ten years and never has been found to have any trace of drugs.

This incident which I wish to talk about happened when the AGAPE was headed out of Big Pine Key to fish for gray snapper. They were about 2 miles from their dock when they were told to stand by for a search. The first Coast Guard search took about one hour and three of the CG people came on board the AGAPE. The Coast Guard person in charge ordered the AGAPE to proceed to Marathon, Florida which was 18 miles away. When Captain Moore asked why he was being taken to Marathon, the Coast Guard person in charge would not respond as to why the vessel was being taken to Marathon.

After a while the entourage rendezvoused with another Coast Guard boat for a special boarding team which consisted one man with 2 cans of brown spray. The Captain and crew was told to stand on the stern while the cabin and deck was being sprayed.

The vessel arrived in Marathon around 10 p.m. 8 to 10 men were waiting for the boat when it arrived at the Coast Guard dock. They were confined to a building on shore while the CG conducted its search. At 11:30 p.m. the Captain and crew were told they were free to leave and that their flares needed to be updated. That was all that was said.

The boat was left a complete mess. The cupboards were empty, the red beans and rice which the Captains mother had made for the crew that night had been searched by gloved or bare hands and was ruined, anchor rope was tangled by the CG and left it in an unsafe condition if the boat had to anchor in a hurry due to an emergency, tore up his chum bag-ripped apart, pulled up one foot of vinyl during the first search and would have pulled up more had the Captain not shown them where a hatch was and opened it for them by cutting the vinyl with a pocket knife.

And all this to an honest commercial fishermen in the name of a drug search. This policy needs to be changed.

Kim Thompson, Exec. Dir.

[Submitted by Robert P. Jones]

TRANSMITTED FROM 912 832 5088 05.18.88 15:20 P.01

P.O. BOX 87
VALONA, GEORGIA 31332

May 12, 1988

Mr. Robert P. Jones
Southeastern Fisheries Association Inc.
312 East Georgia Street
Tallahassee, Florida 32301

Dear Bob;

I am in receipt of your letter dated May 11, 1988 to Congressman Earl Hutto regarding the "zero tolerance policy" being put in place by the Federal Government. I think you are 100% off base and fully in error in the position you and Southeastern have taken. I feel this in the strongest possible terms. If the majority of the board agrees with you, it sure does not make me proud to be a member of the association. We cannot maintain a double standard on this issue.

If "John Q. Public" would spend as much time and effort trying to help law enforcement and provide our children with a Godly foundation upon which to live, as we do trying to protect our own personal finacial interest, we could surely do a better job of combating the supply and the demand for drugs.

Those individuals (assuming there are some) who oppose this policy, could use this same policy to better insure drugs and boats are separated. This may help cut down on accidents, reduce insurance rates, and maybe partially reduce the flow of drugs.

I guess my major question to Southeastern policy makers is: If, at the risk of some finacial loss, we have the opportunity to save some young people from hell on earth and possibly hell for eternity, would we take that risk? Do we expect others to maintain a standard which we will not maintain if it might cost us dollars?

At present I do not know if I'll send this letter to the congressman or not. If the hearings you requested are held, I sure would like to know about them and have some input.

God bless you and yours,

Jack L. Amason

Jack L. Amason

drug8sef

[Submitted by Robert P. Jones]

MAY-25-89 THU 12:08 CUDJOE SALES CAPITAL P.01

'Zero tolerance' is a joke

5-14-89

EDITOR: THE KEYNOTER

On May 7, I went out for what I thought would be a pleasant and profitable fishing trip.

As I approached Big Spanish Key, it was 6 p.m. The Coast Guard stopped me and three men boarded my boat.

After searching the boat, the boarding officer informed me to turn the boat around as they were taking me to the Coast Guard station in Marathon to conduct a more thorough search. I asked him why and his only reply was, "Turn this vessel around, now!"

Smiles —

As we were heading in, the officer said that another Coast Guard boat would meet us around No Name Key with a special boarding crew, as it turned out, one man with two cans of spray was put aboard.

My crew member and I were told to stand in the stern while they sprayed the cabin and deck. It was a brown spray, it showed nothing.

The officer informed me that they were still taking us into Marathon. The boat is slow, it was 10 p.m. when we arrived. During the run in, I asked if I could grill a hamburger for our supper. They said not until they finished the search.

Eight or 10 men were standing on the dock when we arrived. We were asked to get off the boat and were escorted to a building to wait until they completed the search.

At approximately 11:30 p.m. I was told that we were free to leave and to update my fares. The boat was left a mess, cupboards emptied out, paneling removed, anchor rope tangled, chum bag ripped apart.

I was told if they found a seed on the boat it would be seized and I would not get it back.

This new "no tolerance law" is a joke. It is a big waste of taxpayers money. It is not going to help the war on drugs.

It cost me money for the trip plus the loss of fish I might have caught. Instead I spent a day cleaning up the boat. The whole instance left a impression on us. We felt like we were in a foreign country.

Russell Moore
Big Pine Key

[Submitted by Robert P. Jones]

We the undersigned feel the severity of the action taken by the U.S. Government and Key West City Government against the "M.V. Miss Lorraine" was excessive and unconstitutional. The vessel was seizied for forfeiture proceedings on Tuesday, May 3, 1988 for the alleged possession of aminute amount of contraband.

As citizens we feel the concept of Zero Tolerance is a dangerous step in the direction of a dictatorship and is completely unconstitutional unless used with compassion and with the rights of the individual remaining in focus.

We appeal to all those concerned with their constitutional rights in regards to Zero Tolerance whether it's your house, car, boat, to please join us in protection of those rights.

We appeal for the release of the "miss Lorraine" to David Phelps.

Name	Address
Mark Sullivan	1350 Whitehead St. Key West
Sara Pemberton	519 Whitehead St #2 Key West, Fl 3
[illegible] Donnaly	#2 Lopez, Key West, FLA
[illegible]	#4 Charles St KW 33040
	208 Duval St KW Fla 33040
1 Page of 50	PO Box 9823 KW Fl 33041
	98 Hilton Haven Rd Key West Fla
[illegible]	5 Riviera Dr. B.C.
[illegible]	[illegible]
[illegible]	Charles St. [illegible]
[illegible]	615 Greene St Lot 17 Key West
[illegible]	[illegible]
Capt Larry Burke	PO 1564 Key West Fla
Capt Sherri Fisher	" " Carousel
Gary Tyson	13160 Wanty Rd Milan, MI
Carolyn Tyson	13160 Wanty Rd. Milan, Mi 48160
[illegible]	4 Charles St K.W.
[illegible]	1614 Dennis St KW
[illegible]	1922 Siedenberg
[illegible]	Pgh. PA 15106
[illegible]	" " "
Dave Stallard	414 [illegible]

OFF
#2
Coast Guard

[Submitted by Robert P. Jones.]

#3 Also No respect, No Rights, No nothing is afforded the boatman.
Some exceptions to this hard approach do exist - all of the C.G. boarding personnel do not think that their authority is equivalent to the Gestapo.
#4 There have been many other boardings that should not have happened in America and by the same token many pleasant and respectful boarding have taken place.
#5 Inclosed is a letter to the editors of the "Keynoter", this just happened to my Son. Zero tolerance is the instigator of this. Zero tolerance is causing an economic crisis among fishermen, charter boats, any boats plying our waters. How can we control the crews and guests on these boat

Bill Moore
President - Organized Fishermen of Fla.
Rt 5 Box 600
Big Pine Key, Fla. 33043

[Submitted by Robert P. Jones]

Intolerable

Editor, The Citizen,

As reported by the Key West Citizen, the Miss Lorraine, a 67 foot commercial fishing trawler based in Key West, was boarded by the U.S. Coast Guard and Customs agents for a routine inspection.

During the subsequent inspection a minute amount of marijuana (approximately .08 grams – less than one gram consisting of several seeds) was discovered in the crew quarters among personal effects. The vessel was immediately seized by U.S. Customs for forfeiture.

In and of itself this boarding and seizure had no special significance except for the fact it was the first vessel impounded locally by the U.S. Government under the Zero Tolerance Drug Enforcement Policy.

Being present at the time of the boarding and observing the situation first hand, I saw something very disturbing that affects us all. The vessel was seized and its owner arrested before his guilt had even been determined. His vessel was physically abused (interior house was torn up) and his shrimp representing eight days and nights of hard work were confiscated by the Government and sold to a local shrimp company.

A portion of this catch spoiled due to agents not properly protecting it during seizure activities. It is also interesting to note that the firm that handled the seized vessel had reportedly run the vessel aground in transporting it to Marathon. This is a lot to happen to an honest, family man before he even gets his day in court.

What I witnessed was excessive for what would be misdemeanor in any municipality. With all the inconsistencies that exist in enforcement and servicing justice are we going to step even closer to a police state where we cannot protect what we work for. So the potential for abuse is outrageous. Does the punishment fit the offense? Does punishment come before guilt is ascertained?

In a democratic society we are taught to hold our freedoms dearly. While the drug problem must be attacked we should not lose sight of common sense and good reasoning. Will Zero Tolerance mean zero freedom?

As a citizen the concept of zero tolerance will affect you and your future. As a country we fight for human rights not the elimination of those rights.

STEPHEN PARMISANO

STATEMENT OF

ANTONIO J. CALIFA, LEGISLATIVE COUNSEL

ON BEHALF OF

THE AMERICAN CIVIL LIBERTIES UNION

ON

THE ZERO TOLERANCE PROGRAM

BEFORE

UNITED STATES HOUSE OF REPRESENTATIVES
MERCHANT MARINE AND FISHERIES COMMITTEE
COAST GUARD AND NAVIGATION SUBCOMMITTEE

May 26, 1988

Good morning Mr. Chairman and members of this distinguished subcommittee. Mr. Chairman, we commend you for holding these hearings on this important national issue so expeditiously. From the hundreds of phone calls and letters we have received on Zero Tolerance, we can assure you that the public is angry and upset. Zero tolerance makes zero sense. The Administration should stop large- scale drug smuggling. Instead, they look for traces of drugs on fishing boats. If traces are found, the boat is confiscated and people are left without a livelihood. To effectively fight the war on drugs, the Administration should devote all its drug enforcement resources in attacking large-scale drug smuggling. Instead, it has launched a cheap publicity gimmick. In launching this tactic,it is availing itself of an extremely powerful tactic (civil forfeiture) which hurts citizens who have nothing to do with drug smuggling, including many who do not even use drugs. These citizens accused of misdemeanors and those innocent owners who have not been accused face forfeiture proceedings which could ruin their lives. Ironically, these car and boat owners have virtually none of the constitutional guarantees enjoyed by drug lords prosecuted under criminal forfeiture statutes.

THE ZERO TOLERANCE PROGRAM

The model for the Zero Tolerance Program was a pilot program in San Diego. The model program was based on a simple idea. The

United States Attorney would prosecute all people in possession of controlled substances who crossed the border. Their vehicles were confiscated temporarily. First time offenders almost always plead guilty and received probation. After payment of a fine ranging from $150 to $3000, their cars were returned.

Attorney General Meese and Commissioner von Raab have taken this harsh regional program and made it national. They have also made it draconian and unworkable. In a memorandum dated March 30, 1988, Mr. Meese wrote all United States Attorneys describing the San Diego program, expanding it, and urging them to use it in their jurisdictions. The salient point in this expansion was the forfeiture provision. The Attorney General emphasized that the Anti-Drug Abuse Act of 1986 allowed federal prosecutors to use new and very powerful tools. "This law permits law enforcement officers to seize and forfeit any conveyance carrying drugs, even in trace amounts." Conveyances are cars, boats, planes etc.

Instead of having to plead guilty to possession and paying a fine, car owners would now be in a much greater predicament. The federal government would take their vehicle away forever if a trace of a controlled substance or drug paraphernalia was found in it. Several examples of the new Zero Tolerance Program were published in a New York Times story on May 22, 1988.

> "In Key West, Fla., David Phelps, a shrimp fisherman, said he still cannot find where his 73-foot boat was taken after Coast Guardsmen seized it on May 3, saying they found three grams of marijuana seeds and stems aboard it. Customs officials then sold the boat's eight-day haul of shrimp for $5,827 and kept it... .
> ....
> * In Federal Court in Seattle last week, a woman said

Customs inspectors at the Canadian border used tweezers to remove one-tenth of a gram of marijuana from the bottom of her purse before they arrested her and impounded her car.

* A trucker in Washington State lost his 18-wheeler, worth $25,000, when Customs inspectors found three grams of an amphetamine in his wife's purse. He was not charged but he has yet to get his truck back.

* A man's car was seized on the basis of an inspector's belief that he smelled marijuana in it, according to Thomas Hillier, a Federal public defender in Seattle. Mr. Hillier said no marijuana was found and no charges were filed but the car was confiscated anyhow."

In the May 22, 1988 Los Angeles Times there appears another awful example of law enforcement run amok.

Cheryl Caho, a 20-year-old receptionist and model, lost her 1985 Chrysler Laser three weeks ago when Customs inspectors at San Ysidro discovered a marijuana pipe in the glove compartment.

"I told the inspector I didn't know it was there, and he said 'We now own your car,'" Caho said. "I just bought my car and it's a month old. I worked two jobs to buy that car."

She was not charged criminally, but nevertheless lost her car, which she says is worth about $4,700. She said she has made only two payments on the loan. Caho said that her teenage brother left the pipe in the glove compartment when he helped her move last month and that her family has sent an affidavit to Customs swearing to it. "I've never even had a speeding ticket before," she said. "I don't know how they expect me to get to and from work."

The ACLU has a long history of protecting individuals against government excesses, and ensuring that the liberty and freedom guaranteed the people in the Constitution and the Bill of Rights are not abridged. The ACLU thinks that the Zero Tolerance Program is a serious threat to the civil liberties of Americans. The Zero Tolerance Program deprives Americans of rights guaranteed under the Constitution, imposes outrageous and

disproportionate penalties for non-criminal offenses, and runs counter to the notions of fundamental fairness and the rule of law in which all Americans take justifiable pride.

BASIC CONSTITUTIONAL RIGHTS- CRIMINAL

The Constitution affords people accused of crimes certain rights. Among these are the right to confront one's accusers, the right to be represented by appointed counsel, the right of compulsory process to obtain witnesses, the right to have guilt proved beyond a reasonable doubt, the presumption of innocence, and the right to a trial before an impartial trier of fact, see Argersinger v. Hamlin 407 U. S. 25 (1972). For example, if a boat was boarded by the Coast Guard, and if they found marijuana, they could charge the people on board with a criminal violation--possession of marijuana. The whole panoply of criminal safeguards would then come into play. As we shall see, these constitutional safeguards are not available under the civil forfeiture provisions, 21 U.S.C. 881, which Mr.Meese urged the U.S. Attorneys to use. It comes as no surprise that federal enforcement officials have chosen the easy (for them) way out.

> "The DEA views Title 21 U.S.C. 881(a)(6) as our primary tool in removal of the traffickers' assets. This is not to exclude other avenues. The basis for this view is the civil litigation nature of the proceedings vis-a-vis criminal prosecution. The drug agent is faced with the development of evidence on a probable cause level as opposed to proof beyond a shadow of doubt in criminal proceedings. This is not to say that we will proceed in a whimsical manner... ." Drug Agent's Guide to Forfeiture of Assets, Drug Enforcement Administration, United States Department of Justice (Washington D.C. 1981) p.354.

Let us turn to constitutional protections afforded Americans who are in danger of losing their property through civil proceedings.

BASIC CONSTITUTIONAL RIGHTS -- CIVIL

The Fifth Amendment to the Constitution states, "No person shall be...deprived of life, liberty, or property without due process of law". Due process is a cornerstone of our national commitment to fundamental fairness and individual liberty. In the past 28 years, the Supreme Court has held that the following interests are entitled to some type of due process hearing prior to government action: (1) student suspension from school, Goss v. Lopez, 419 U. S. 565 (1975); (2) temporary termination of public assistance, Goldberg v. Kelly, 397 U.S. 254 (1970); (3) teacher tenure, Perry v. Sindermann, 408 U.S. 593 (1972); (4) wages and salary, North Georgia Finishing Inc. v. DI-CHEM, Inc., 419 U.S. 601 (1975); (5) personal property, Fuentes v. Shevin, 407 U.S.67 (1972); (6) parole, Morissey v.Brewer 408 U.S. 47 (1972); (7) probation, Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1 (1979); (8) public employment, Elrod v. Burns, 427 U.S. 347 (1976); (9) public utility service, Memphis Light, Gas and Water Division v. Craft, 436 U. S. 1(1978); (10) driver's license, Bell v. Burson, 402 U. S.535 (1971); (11) social security disability compensation, Mathews v. Eldridge, 424 U. S.319 (1980); and (12) transfer from a prison to a mental hospital, Vitek v.Jones, 445 U. S. 480 (1980).

The seminal modern case on procedural due process is Goldberg v Kelly, 397 U.S. 254 (1970) which held that due process requires an adequate hearing before welfare benefits can be terminated even if the termination is for a brief interval. The Goldberg Court identified the elements of procedural due process. An adequate hearing includes the opportunity to present oral argument, present witnesses, and cross examine adverse witnesses. Fuentes v. Shevin established the importance of notice and hearing before deprivation. The later case of Mathews v. Eldridge, 424 U.S. 319, 333, stated that the fundamental requirement of due process is to be heard at a meaningful time and in a meaningful manner. Additionally, judicial review is often considered part of procedural due process.

The Zero Tolerance Program denies people many of the basic rights of procedural due process that have been delineated above. The owner is deprived of the property first, and must request a hearing to reclaim it. In the meantime, the owner is deprived of property -- sometimes his livelihood. At the hearing, the owner is presumed guilty for purposes of forfeiture. Moreover, although forfeiture is quasi-criminal in nature, the property owner has no right to appointed counsel. Thus, there is little opportunity to be heard in a meaningful manner. Although the property interest of a home or boat owner may be greater than that of someone whose welfare benefits may be temporarily terminated, the owner has less due process protection.

Supreme Court rulings and lower court decisions on what

process is due in forfeiture proceedings have been ambiguous, see United States v.United States Coin & Currency 401 U. S.715 (1971), and Calero-Toledo v. Pearson Yacht Leasing Co. 416 U.S.663 (1974). The Congress certainly can and should legislate in those areas where it believes that the forfeiture laws are unfair and oppressive. For example, the Congress could prohibit forfeiture where the owner did not know that a controlled substance was in his car or boat. Congress could also expand due process rights of property owners whose vehicles have small amounts of drugs on them. Certainly, Congress has much latitude in this area to rectify unfair results.

BASIC CONSTITUTIONAL RIGHTS -- ZERO TOLERANCE

A property owner who is subject to zero tolerance is in a very difficult spot. As an example, let us take a boat owner who is using his boat within twelve miles of the coast of the United States. The Coast Guard chooses this boat, at random, for boarding and search. They find a marijuana joint on the boat. The boat is confiscated. The property owner is taken back to land on the Coast Guard vessel. He is not charged with a criminal violation, but he has lost his boat. It became government property the moment the joint was discovered.

The boat owner wants his boat returned, and claims that he knew nothing about the marijuana found by the Coast Guard. After filing the appropriate pleadings, the owner is in federal district court. The government does not have to show beyond a

reasonable doubt that the owner knew of the marijuana. On the contrary, the owner has the burden of proof that he did not know that the marijuana was on board. Such a showing, i.e. that one did not know something, is extraordinarily difficult to make. Additionally, the owner would have to show he did everything reasonably possible to prevent illicit use of drugs. Obviously, to show that one did everything possible is difficult.

The government merely has to show that the drugs were on the boat, and the burden shifts to the owner. Thus the most fundamental requirements of the criminal law--the presumption of innocence, the Government having to carry the burden of proof, proof beyond a reasonable doubt--are all unavailable in a forfeiture proceeding. This is so even though the government's purpose is clearly punitive. In the factual situations covered above, there are instances where the presence of a few grains of marijuana resulted in the loss of property worth more than a hundred thousand dollars. For example, the RICO treble damages provision is considered a punitive, quasi-criminal penalty. Although the forfeiture penalty is harsh, there are no criminal procedural protections.

The infringement on constitutional rights in the civil forfeiture contexts is highlighted by a comparison to federal criminal forfeiture laws. Under 21 U.S.C. 848, the Controlled Substances Act, the government may seize the drug profits and assets of leaders of professional drug rings. However, to gain forfeiture of the assets of a major drug boss, the government

must prove guilt beyond a reasonable doubt and prove the defendant's property and interests are derived from the drug operation. Similarly, in RICO actions, the government may seize the assets of major drug racketeers but only after proving in a trial the defendant's guilt beyond a reasonable doubt and also must establish beyond a reasonable doubt that the contested property is sufficiently related to the criminal enterprise to warrant forfeiture. By contrast, in a civil forfeiture proceeding, which can have dire consequences for poorer defendants, the government need only show they found drugs and the burden of proof, as well as particularly difficult standard of proof, rest squarely upon the property owner. It is the position of the ACLU that Congress did not intend to apply civil forfeiture proceedings to punish petty drug offenders and innocent owners, and that it cannot and should not have intended to create such a powerful device with such a skewed standard of proof for use against innocent owners and petty drug offenders.

The punishment does not fit the crime (if indeed a crime has been committed). In fact, the punishment is grossly disproportionate to the "crime". Let us use as an example a boat owner, with no prior criminal record, who knowingly has a marijuana joint on board his boat. His boat is worth $100,000. The Coast Guard boards the boat, and finds the owner smoking marijuana. They confiscate his expensive boat. In effect, he has just been fined $100,000 for an offense that carries a maximum criminal penalty of $1000. This sort of grossly disproportionate

punishment is obviously unfair. It serves no useful purpose, since the boat is merely the place where the possession crime occurs, nothing is gained by depriving the owner of the boat. Conceptually, there is no difference between a possession crime on a boat and a possession crime in a house. Will the Administration begin confiscating houses and apartment buildings where there is some trace of an illegal substance?

RESOURCE ALLOCATION

From all accounts, the Coast Guard has had severe budget cutbacks. As a public policy matter, shouldn't these diminished resources be concentrated on apprehending smugglers instead of harassing boat owners? A recent Rand Corporations study showed that random Coast Guard searches yielded drugs only 2.6% of the time. One of our affiliates has a case where the Coast Guard scraped the deck of a small pleasure boat and found some marijuana seeds. They confiscated the boat. This strikes us as a misuse of public resources. There are certainly enough drug smugglers to occupy the Administration's attention. A policy that levies horrible penalties on (at best) casual users is a desperate public relations ploy to show that the Administration is "tough on drugs".

CONCLUSION

The Administration should abandon the Zero Tolerance forfeiture policy. Innocent people are being gravely injured by

89-225 0 - 88 - 4

this draconian approach. Many have lost valuable assets because friends or relatives had drugs or paraphernalia in the car of which the owner was unaware. Even those owners who were aware that they had small amounts of an illegal drug, were subjected to much harsher penalties under the civil laws than they would have been under the criminal laws.

5/88
zero.tol
pc#5

[Submitted by Department of Transportation]

ZERO TOLERANCE GUIDELINES

1. FOR SEIZURE OF VESSELS BEYOND THE CUSTOMS WATERS: In order to consistently implement the zero tolerance program, the following guidelines should be applied when determining if a vessel is subject to seizure beyond the Customs waters:

A. When any measurable quantity of controlled substances are discovered and there is no independent indicia of an intent to manufacture or distribute, a determination must be made whether there is an intent to import these substances into the United States. Seizure is not authorized for possession alone. The following indicia of intent, among others, should be evaluated in deciding whether there is probable cause to believe that the vessel is being used to bring any controlled substance into the United States (19 U.S.C. 1595A).

(1) Distance of the vessel from the United States. The closer the vessel is to the 12-mile limit, the more probable it is that the drugs will be brought into the U.S.

(2) Duration of the suspect vessel's voyage. The sooner the vessel intends to enter U.S. waters, the more likely that the drugs will be brought into the U.S.

(3) The vessel's last port of call (LPOC). Evidence which indicates the LPOC was the United States makes it probable that the drugs were exported from the U.S. This in itself is a violation of U.S. law and subjects the vessel to seizure.

(4) The vessel's next port of call (NPOC). Evidence which indicates that the NPOC is in the United States makes it more probable that the drugs will be brought into the United States.

(5) Other ports of call. Evidence which indicates that the vessel has visited or will stop at an intermediate non-U.S. port prior to the termination of its voyage may affect the impact of factors 1. A. (1) through 1. A. (4).

(6) Location of the controlled substance. The more accessible the drugs are for immediate consumption, the more likely they will be consumed prior to the vessel's entry into U.S. waters.

(7) Packaging of the controlled substance. The more elaborate the packaging of the controlled substance, the more likely it is not intended for immediate consumption and will be brought into the U.S.

(8) Cooperation of individuals aboard the suspect vessel. An uncooperative attitude or deceptive behavior by an individual on the suspect vessel may indicate an awareness that the vessel is involved in a violation.

B. In addition, other factors not specifically enumerated above may also be observed and add to the probability that the vessel is being used to bring controlled substances into the United States. While no single factor by itself may be sufficient to create probable cause that the vessel is being used for importation of controlled substances, there is no minimum number of these factors which must be considered prior to reaching such a determination, but something more than mere suspicion is required. The boarding officer should consider the totality of all the available evidence and circumstances in making the intent to import determination.

C. Any vessel which is being used to facilitate the manufacture or distribution of controlled substances is always subject to seizure pursuant to 46 U.S.C. 1903/1904. As a guide to determining whether there is probable cause to believe that a vessel is so engaged, intent to manufacture or distribute may be presumed if quantities of a controlled substance are found aboard which exceed what is probable for personal consumption in light of all the circumstances.

D. Customs law permits the seizure and forfeiture of a common carrier when drugs are found on board the vessel in packages that are unmanifested or improperly manifested or when the drugs are concealed on the vessel but not in the cargo unless neither the owner, operator, master, or pilot knew or by the highest degree of care and diligence could have known that the drugs were on board (19 U.S.C. 6594 (C)). Other federal laws only authorize forfeiture when it appears that the owner, master or person in charge was a consenting party or privy to the discovered violation (21 U.S.C. 881, 49 U.S.C. 782). A vessel is a common carrier if it is engaged in the business of public employment for the carriage of goods or passengers for hire. Generally, i.e. it is available to transport all goods or people who present themselves for such carriage. Examples of a common carrier are: a ferry, certain sport-fishing "head-boats," a merchant freighter carrying cargos for many owners, etc. While the ultimate burden is upon the ship owner to prove that he is a common carrier, the boarding officer should seek guidance from his operational commander prior to seizing any vessel which appears to have the distinguishing characteristic of a common carrier.

E. If Coast Guard district or area commanders determine that an escort of the vessel to the nearest port would not be a wise and prudent use of the Coast Guard resources and could jeopardize other important missions of the Coast Guard, he shall place the vessel under seizure and order it to proceed to a designated port. Upon its arrival to the designated port, the Customs Service shall assume custody of the vessel and, upon a review of the facts in the case, the district director will determine the nature of the continuing custody of the vessel pending determination of further proceedings.

2. FOR SEIZURE OF VESSELS SHOREWARD OF THE OUTER LIMIT OF THE CUSTOMS WATERS:

A. It is the policy to enforce zero tolerance to the full extent of the law. This means that shoreward of the 12-mile limit, the U.S. Coast Guard, in carrying out its normal duties, will not ignore personal use quantities (measurable amounts) of controlled substances found aboard the vessel. Possession of such quantities on a vessel will result in a seizure.

B. For vessel seizures effected by the Coast Guard under this policy guideline, the Customs Service shall assume custody of the vessel, and, upon a review of the facts in the case, the district director will determine the nature of the continuing custody of the vessel pending determination of further proceedings.

U.S. Department of Transportation
Office of the Secretary of Transportation

Transportation Facts

Office of Public Affairs

ZERO TOLERANCE
FACT SHEET

MAY 25 1989

Contact: Wendy DeMocker
Tele. (202) 366-0237
Capt. R. Peterson (USCG)
Tele. (202) 267-1587

Policy: "Zero tolerance" involves the strict enforcement of the nation's existing drug laws. This policy was endorsed by the cabinet-level National Drug Policy Board, and is being implemented by all Federal agencies involved in enforcement of the drug laws. The policy was adopted by the U.S. Coast Guard in a directive on April 11, 1988. Coast Guard procedures are modeled after the successful Zero Tolerance Program headed by the U.S. Attorney's Office in the Southern District of California.

The policy recognizes that drug consumers, as well as traffickers, must be responsible for their actions. It aims to deter drug use through zero tolerance for infractions of the drug laws. The Coast Guard has led the effort in the maritime area to reduce the drug supply through interdiction. Under the new policy, it will also work to reduce the demand. Both efforts are vital to the success of the national anti-drug abuse programs.

Under the zero tolerance policy, discovery of a measurable amount of illegal drugs on a vessel will lead to the seizure of the vessel and, where appropriate, the arrest of those on board. Previously, the Coast Guard did not seize boats when only "personal use" quantities were found. Coast Guard boardings and inspections will continue to be conducted as in the past, as part of its normal duties. The goal is to deter drug use through strict enforcement of existing drug laws.

Authority: Federal laws providing for the seizure and forfeiture of vessels carrying illegal drugs, even in trace amounts, are 19 U.S.C. 1595A,21 U.S.C. 881 and 49 U.S.C. 782. arrests of individuals are made under 21 U.S.C. 844 and 21 U.S.C. 955.

Criteria: While the presence of a measurable amount of drugs makes a vessel subject to seizure, the appropriateness of forfeiture, particularly in the case of commercial vessels, will depend on a number of factors, such as the owner's knowledge, and care taken before entrusting the vessel to another.

Procedure: When a vessel is seized the Coast Guard may tow or escort the vessel to port, where it will be turned over to the Customs Service. If accompanying the vessel to port would jeopardize other Coast Guard missions, the Coast Guard may choose to direct the seized vessel to proceed unescorted to port and report to Customs authorities who would be notified of the vessel's expected arrival. Customs will then initiate administrative procedures to determine if the owner should be fined or the vessel forfeited. If forfeiture is ordered, the owner may post an appropriate bond and have the matter referred to a judicial condemnation proceeding, at which he may present his case against forfeiture. If forfeiture is not ordered, the vessel will be returned to the owner. Seizure and forfeiture are administrative actions taken against the vessel, and should not be confused with criminal charges placed against an individual. It is possible that a boat may be seized and forfeited while those aboard are not arrested or charged.

When an individual is arrested, he may be charged with violation of Federal law, as regards possession of illegal drugs for example, and the case referred to the U.S. Attorney for prosecution. In some cases, where state laws apply, he may be turned over to local authorities for prosecution.

Reasonable precautions: To minimize the risk of forfeiture, boat owners should demonstrate a zero tolerance attitude toward illegal drugs on their boats. They should be able to show that they have made a reasonable effort to notify their crew and passengers that illegal drugs are not permitted and that users will be reported. They should also make a reasonable effort to prevent drugs from being brought aboard or used on board if they are aware of it. However, these efforts are not an absolute defense against forfeiture but may be considered as mitigating factors.

Legal advice should be sought regarding various specific actions that might be taken, such as posting a notice on the boat, for example. Similarly, owners who lease their boats may wish to obtain legal advice regarding contract and insurance provisions.

Recent Developments: Contrary to some recent reports, there is no change in the zero tolerance policy, but rather we have refined our guidance to enforcement officers in how the law is to be applied on the high seas (outside 12 miles). As with any new procedure, fine tuning usually follows an initial shakedown period.

- Simple possession of any measurable quantity of a controlled substance on a boat INSIDE 12 miles is, without question, against the law and will result in vessel seizure.
- For cases outside the 12-mile limit, an intent to either introduce the illegal substance into the U.S., or to export it, must be shown. That is the law, it is not a change in policy.
- The Coast Guard has recently issued guidance to its enforcement officers on how to more precisely determine the "intent" involved in high seas situations.

KODIAK & WESTERN TRAWLER GROUP

David Harville

F/V Margaret Lyn
Little Bear
Hickory Wind
Adgee
Joey Lee II

P.O. Box 1578
Kodiak, AK 99615
Telephone:
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AK DAGRS KODK 26429

May 25, 1988

Mr. Rod Moore
Merchant Marine Minority
Fax 2260283

Rod:

This is the story of the boarding of the F/V Little Bear as Captain Grimes relayed it to me.

"On the morning of May 19th, Robbie (King) woke me and told me the Coast Guard was in the area and that they were boarding the Tomi Maru 55 and we should expect to be boarded also.

I told the crew that IF they had any controlled substances of any type, that they should get rid of it NOW. I, myself, am not a user (this has been verified by several people), but I do know that use of marijuana is not uncommon.

While the Coast Guard was boarding the Tomi Maru 55, I called them and said I was going to pick up the tow and deliver. As we were fishing very close to the 58th parallel, the current pushed us over the line into a closed area, comprising of many of thousands of square miles.

While we were picking up, the Coast Guard informed us that they were going to board and as we were hooking up the codend to make a transfer, they came aboard. We delivered the codend to the Tomi Maru 55 and got an empty back. During this time, the Coast Guard found two herring aboard our vessel. These are a prohibited species and are supposed to be discarded, and in fact, were actually taken from the shovel that Robbie King was using to discard them. Also, in the empty codend, the Coast Guard searched and found two additional herring. They then issued us a citation for prohibited species. We were not even given an opportunity to discard these fish before they were confiscated.

The Coast Guard took a picture of our plotter showing a position of 57 59'56". This figures out to be 425 feet into this several thousand square miles of closed area. They issued a citation for fishing in a closed area. We were, in fact, not fishing, but were making a transfer and putting up with a boarding party.

The Coast Guard did their normal safety checks in the engine room and filled out their reports and noted some violations. They asked if we had guns aboard, and I had the guns brought

out, of which there were several. About this time, one of the Coast Guard personnel searching a coat belonging to Glen Heleman found a 35mm film case with marijuana in it. They then asked if there were more guns and started a routine search. They found additional weapons which were stored by crew members who were on rotation at the time and not physically aboard the vessel. They then decided to search for more guns, stating that it was for their own safety, and found seven more guns. During this search of the vessel, they found paraphernalia in several spots; some having been secreted in supposedly safe spots by previous crew members (at least we assumed so as none of the crew knew of a great portion of this "paraphernalia").

About this time, they called the CG Cutter Midgett and were instructed to wait. We waited about 1 1/2 hours with no activity. We were under the impression that we were going to be issued a warning and that they were going to leave. However, they then received a call from the Midgett stating that customs had ordered a full customs search. They found more paraphernalia (a couple of roaches) and a small additional amount of marijuana, bringing the total amount to less than half an ounce.

I was then told that the vessel was under seizure and would have to proceed to Dutch Harbor by 4 PM May 24th. The total amount of time the Coast Guard was aboard my vessel was over 10 hours."

God, this is the story as it was relayed to me by Captain Grimes. It was also relayed to me by Robbie King that he had asked Glen to discard the marijuana and Glen had refused. The crew and captain claim they were unaware of MOST of the paraphernalia found aboard. The captain, Tom Grimes, is a relief skipper and had only been on the vessel a couple of weeks.

I have subsequently had conversations with Captain Darryl Albin (the regular captain) and he has relayed to me some new insights. Crewman Robbie King, is an Alaskan native and spends much of his free time on the vessel carving ivory and other artifacts (in fact, the Coast Guard found ivory on the vessel and made a big issue of it until they found it to be a personal possession of a native artisan).

The thirteen blocks of Oregon myrtlewood impounded by the Coast Guard are wooden bases used in his carving. It is also reasonable to assume that some of the pipes found were hand carved by him. Let's face it, according to the tickets written, if you count the 13 blocks of wood as pipes, there were over 20 pipes on the boat.

As you have read my crew agreements, you know I do not approve of drugs or the misuse of alcohol on my vessels. I have taken the action of firing Glen Heleman; I am quite distressed that he showed no concern for the rest of the crew, the vessel or the ownership, and, in fact, could not understand why I was so upset.

I realize the crew was in violation of law and should be punished, however, I feel it is inappropriate that my vessel was seized, taken away from it's gainful employment and not allowed to continue operation. This has so far cost me approximately $120,000.00 gross business and the boat has not yet been released. I find it very hard to understand why, when I have done everything in my power by way of crew agreements, to maintain a "clean" boat, that I am the one who has to suffer.

In light of the fact that the Coast Guard has been screaming their heads off about no monies to operate and have, in fact, taken the time to come to the coastal communities in Alaska and inform us that they were going to curtail their operations as they had no money, were going to be unable to properly control the "Donut Hole" area, and were making cuts in other areas, I find it hard to justify tying up a Coast Guard Cutter and it's crew to harass a 65 fishing vessel for ten hours. I would like to know how much it cost the Coast Guard, how much it's going to cost the Customs department, how much it's going to cost the National Marine Enforcement branch over less than half an ounce of marijuana, four herring and a 300+ foot violation.

Sincerely,

David P. Harville
Managing Owner
F/V Little Bear

P.S.
I have been watching the National News and I want Congressman Young and Congressman Studds to know that I appreciate their efforts to bring some sanity into what has developed into a real tragic mess for some of us.

DPH/nad

CCN: (Regional

ENFORCEMENT ACTION REPORT

NAME OF SUBJECT (Last - First - Middle) | DATE OF BIRTH

ADDRESS OF SUBJECT

NAME OF VESSEL | NATIONALITY

INTL. RADIO CALL SIGN/DOCUMENTATION NO. | DATE OF VIO.

LATITUDE/LONGITUDE/PLACE OF VIOLATION

SEIZED PROPERTY RECEIPTS
Yes ☐ # _____ No ☐

COUNT	TYPE OF ACTION	REGULATION/STATUTE VIOLATED

4 goddam Herring?

AUTHORIZED OFFICER | OFFICER'S ID NO.

DUTY STATION/VESSEL

DATE AND TIME OF REPORT | E.A.R. NO. S 6265

SUBJECT'S COPY

CCN: (Regional Office use only)

ENFORCEMENT ACTION REPORT

NAME OF SUBJECT (Last - First - Middle) | DATE OF BIRTH

ADDRESS OF SUBJECT

NAME OF VESSEL | NATIONALITY

INTL. RADIO CALL SIGN/DOCUMENTATION NO. | DATE OF VIO.

LATITUDE/LONGITUDE/PLACE OF VIOLATION
57.59'56"

SEIZED PROPERTY RECEIPTS
Yes ☐ # _____ No ☐

COUNT	TYPE OF ACTION	REGULATION/STATUTE VIOLATED

AUTHORIZED OFFICER | OFFICER'S ID NO.

DUTY STATION/VESSEL

DATE AND TIME OF REPORT | E.A.R. NO. S 6264

SUBJECT'S COPY

SEIZED PROPERTY RECEIPT

NO. 91434

DATE 18 MAY 1988

ARTICLE(S) SEIZED 13 SMALL BLOCKS OF WOOD (POSSIBLE PIPE). BLUE RAG

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91402

DATE 18 MAY 88

ARTICLE(S) SEIZED 1/5 of a Plastic Baggie OF MARIHUANA - Approx 1/4 - 1/5 oz.

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91409

DATE 18 MAY 88

ARTICLE(S) SEIZED 1/4 OZ MARIHUANA FILM CANNISTER

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

[illegible]

METAL STEM

NO AA FORM 88-88 (12-78)

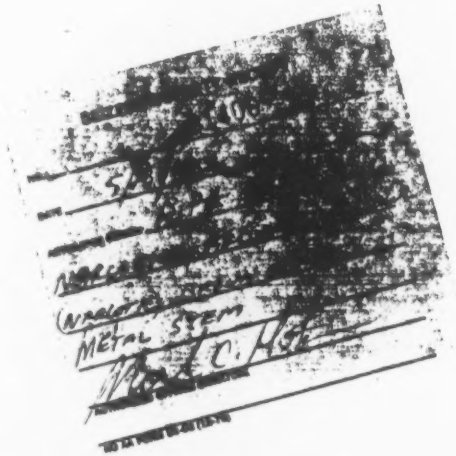
SEIZED PROPERTY RECEIPT

NO. 91432

DATE 18 MAY 1988

[illegible] BLACK BOX [illegible] (SUSPECT)

NO AA FORM 88-88 (12-78)



SEIZED PROPERTY RECEIPT

NO. 91416

DATE 18 MAY 88

ARTICLE(S) SEIZED BLUE PIPE W/[illegible] (PLASTIC)

Mark C. [illegible]

AUTHORIZED OFFICER SIGNATURE

NO AA FORM [illegible]

SEIZED PROPERTY RECEIPT

NO. 91431

DATE 18 MAY 1988

ARTICLE(S) SEIZED 1 ROLLING MACHINE

Mark C. [illegible]

AUTHORIZED OFFICER SIGNATURE

NO AA FORM [illegible]

SEIZED PROPERTY RECEIPT

NO. 91419

DATE 18 MAY 1988

ARTICLE(S) SEIZED TYLER SYRINGE W/NEEDLE

Mark C. [illegible]

AUTHORIZED OFFICER SIGNATURE

NO AA FORM [illegible]

SEIZED PROPERTY RECEIPT

NO. 91408

DATE 5/18/88

ARTICLE(S) SEIZED WOODEN [illegible] WITH RESINOE ([illegible]

Mark C. [illegible]

AUTHORIZED OFFICER SIGNATURE

NO AA FORM [illegible]

SEIZED PROPERTY RECEIPT

[illegible]

[illegible] MAY 1988

[illegible] MERRIAN

Mark C. [illegible]

AUTHORIZED OFFICER SIGNATURE

NO AA FORM [illegible]

[illegible]

[illegible]

NO AA FORM [illegible]

SEIZED PROPERTY RECEIPT

NO. 91420

DATE 18 MAY 88

ARTICLE(S) SEIZED: BERING Sea 57°57N 160°14W PIPE BROWN W/RESIN

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91421

DATE 18 MAY 1988

ARTICLE(S) SEIZED: 3 WOODEN PIPES, 2 SMALL BAGS OF FILTERS, (10 1 BAG)(14 1 BAG) 1 SMALL METAL "BOWL" (PIPE PIECE), 1 BOX ROLLING PAPERS, 1 LONG METAL PIPE.

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91403

DATE 5/18/88

ARTICLE(S) SEIZED: POSSITION REPORTS (3) PAGES

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91422

DATE 18 MAY 88

ARTICLE(S) SEIZED: Bering Sea 57°57N 160°14W CONE PIECE TUPPERWARE W/RESIN

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91435

DATE 2[illegible] MAY 1988

ARTICLE(S) SEIZED: 2 BOXES ROLLING PAPER, 1 METAL PIPE, RESIDUE FROM CREW'S STATEROOM (AFT)

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

[illegible]

[illegible] 17 [illegible] PIPES W/RESIN Sea-3 [illegible] W/RESIN Sea-GLASS JAR W/POSSIBLE HIGH RESIN

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91436

DATE 18 MAY 1988

ARTICLE(S) SEIZED: 1 METAL ROACH CLIP.

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91405

DATE 18 May 88

ARTICLE(S) SEIZED: BRASS PIPE

NO AA FORM 88-88 (12-78)

NO. 91401

DATE 5/18/88

ARTICLE(S) SEIZED: NARCOTICS - TWO - ROACHES AND ASSORTED PARAPHANALIA

AUTHORIZED OFFICER SIGNATURE

NO AA FORM 88-88 (12-78)

SEIZED PROPERTY RECEIPT

NO. 91433

DATE [illegible]

[illegible]

SEIZED PROPERTY RECEIPT

[illegible]

SEIZED PROPERTY RECEIPT

NO. 91404

DATE 18 MAY 88

[illegible] PIPE (1)

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

May 26, 1988

Dear Mr. Hutto:

Zero Tolerance has become a new theme of Federal anti-drug efforts. Since the Customs Service has been the instigator of expanding this concept, I would like to take this opportunity to explain the program to you. Some of the recent media reports, unfortunately, have not accurately portrayed this important effort.

Zero Tolerance means that we are not going to accept illicit drugs in any measurable amount, at any time or at any place on the border! Previously, small amounts of drugs, when discovered by our law enforcement officers, were either overlooked or violators were permitted to pay only a small fine. In addition, there were substantially different enforcement and prosecution practices existing throughout the country; in that, in some locations violators were treated with great leniency. I believe that if we are going to get serious about our anti-drug effort, we must deal with all violators. Drug users who possess small quantities of narcotics are a major source of the problem because they create the demand. Our efforts must no longer ignore these individuals who are the underlying cause of the drug epidemic.

Zero Tolerance was originally developed by the Customs Service, in conjunction with the U.S. Attorney in San Diego, as a local initiative to stop drug trafficking in all amounts coming across the Mexican border through San Diego. In essence, all individuals who were found in possession of illicit drugs, were charged with a misdemeanor and a felony offense. The U.S. Attorney often accepted guilty pleas to the misdemeanor offense for small quantities of drugs. Violators, in this category, were often sentenced to community service work. This program did not cause substantial additional workload on the U.S. Attorney in San Diego, the judicial system, or law enforcement officials because of the high rate of guilty pleas.

After the program's success in the San Diego district, I presented the program to the National Drug Policy Board and received an enthusiastic unanimous endorsement for nationwide application. Zero Tolerance was implemented by U.S. Customs on March 21, 1988, at all U.S. ports of entry. The Customs Service Zero Tolerance program has not changed, and continues to represent a tough, just and judicious program applicable to all individuals involved with illegal drugs. Secretary Baker and I stand strongly behind this program, and reiterate that it has not and will not be softened.

Under the Customs program, the guiding principle is to secure criminal prosecution of every individual who attempts to smuggle dangerous drugs across our borders, in any measurable amount. Through this hard line approach with personal quantity users, a message will be sent to users, as well as traffickers and suppliers that they will no longer have a place to peddle their wares. It is important to note that our search practices have not changed; we are still looking for major drug smugglers. The difference in Zero Tolerance is that when we find an individual with a small quantity of drugs, he is arrested and charged rather than simply fined.

Anyone committing a Zero Tolerance drug infraction is charged with violating 21 USC 952, a felony importation count, and 21 USC 844, a misdemeanor possession count. If the individual pleads guilty to the misdemeanor, the felony charge is dismissed and the individual is either fined, imprisoned, placed on probation, placed in a drug treatment program or assigned to a community service. We believe these provide a just and fair approach with the Zero Tolerance framework.

In addition to the criminal penalties, the Customs Service seeks, under 19 USC 1595a (a) and other applicable Federal laws, civil forfeiture of any conveyance used to bring drugs into the United States. While Customs administrative forfeiture proceedings are applicable to conveyances seized for importing, exporting, transporting or storing any controlled substance, these procedures also guarantee that the owner, lienholder or other interested party is afforded due process of law. Notice of

the intent to forfeit summarily and dispose of the property is provided to interested parties. Individuals may petition for refund of proceeds from the sale of seized and forfeited conveyances. Owners and lienholders not in possession of the conveyance at the time of the violation may petition for return of the conveyance and present evidence of reasonable steps taken as innocent owners to prevent the prescribed use of the conveyance. The law also protects common carriers when drugs are found on passengers, or in their luggage, or in cargo being lawfully transported. An interested party also retains the right to file a claim and cost bond which suspends the summary forfeiture proceedings and the case is referred to the U.S. Attorney for the institution of judicial forfeiture proceedings. Thus, Customs forfeiture proceedings offer the owner various avenues of redress as well as the opportunity to judicially contest the forfeiture.

I know that the drug problem is the number one concern of our citizens, and that you as an elected official are responding to this and expect responsible government officials to do the same. It is now clear that our efforts to combat the major drug traffickers are not enough; we must also deal with small distributors and narcotics users. The users are a root cause of the problem and must personally feel the impact of the war on drugs. I believe that Zero Tolerance is the first of many initiatives that can be initiated to impact all individuals in the narcotics chain whether they are major distributors, small time traffickers, or users. The program is designed to punish those involved in the illegal drug trade, while still providing due process to those accused of these crimes. The Customs Service will continue to do everything within its power, within the law, to raise the heat in the struggle against illegal drugs.

Yours faithfully,

William von Raab

The Honorable
Earl Hutto
House of Representatives
Washington, D.C. 20515

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JUN 20 1988

The Honorable Walter B. Jones
Chairman
House Committee on Merchant Marine
and Fisheries
241 Cannon Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I understand that the House Merchant Marine and Fisheries Committee will consider and possibly vote on changes to the Administration's Zero Tolerance anti-drug policy on Tuesday, June 21, 1988, and that those proposed changes range from an outright exemption for so-called "innocent vessel owners" to some kind of constructive seizure.

I want to put this Department firmly on the record as opposed to constructive seizure or to any kind of vessel owner exemption from Zero Tolerance. Both proposals have the net effect of gutting the Zero Tolerance program, which has had a tremendous effect in keeping drugs off boats and in improving marine safety.

Illegal drugs have no place in the marine environment. Zero Tolerance sends a strong message to boat owners and operators that the casual or recreational use of drugs on the water will no longer be tolerated.

The Zero Tolerance Policy is fair warning that anyone who is using or transporting even small amounts of drugs on our waterways--whether it's in a commercial vessel, a row boat, or a million-dollar yacht--not only will be prosecuted to the fullest extent of applicable State and Federal laws, but also will be risking the loss of property. Dilution of this zero tolerance approach to drug violations by the passengers and crew of vessels on our waterways by exceptions to the seizure laws is the equivalent of declaring an "open season" for offshore drug use.

The Coast Guard's implementation guidelines issued on May 23, 1988, ensure that under Zero Tolerance we will be bringing our strongest cases forward and, in doing so, adequately protect vessel owners. Therefore, I do not believe that any other changes to the policy are necessary or advisable.

It is our responsibility to protect recreational boaters and commercial operators from the dangers posed by drug users, and the Zero Tolerance policy is working to accomplish this goal. As we approach the Fourth of July holiday weekend, it is important to remember that as our families and friends make their vacation plans, that drugs present a serious safety threat.

I urge you and the Committee to oppose the "innocent vessel owner" exception or any other dilution of the Zero Tolerance policy. Help me make the motto of every vessel owner in this country "No Drugs on the Boat," and in doing so to show the American people that we are truly serious about fighting drug use in this nation and maintaining safety on our waterways.

Sincerely,

Jim

Jim Burnley

Fisheries group says seized drug was baking soda

Jacksonville, NC Daily News 5/17/88

By RICHARD F. SMITH
Daily News Staff

Less than two ounces of a substance described by the Coast Guard as an "unidentified barbiturate" found on a seized scalloping boat was actually baking soda, the executive director of the N.C. Fisheries Association Inc. charged today.

The powdery substance was found May 3 aboard the Lorraine Carol, which was released Monday by U.S. Customs to its owner, Michael "Jimbo" Ireland of Aurora.

Coast Guardsmen impounded the Lorraine Carol on May 3 under the tough new "zero-tolerance" drug policy of the Reagan administration.

Coast Guard spokesmen said a search of the scalloper turned up marijuana seeds, two pipes with marijuana residue, less than two ounces of an unidentified barbiturate and part of a marijuana cigarette.

"Ireland told them it was baking soda and it field-tested negative for cocaine," said Jerry Schill, executive director of the private trade group representing state commercial fishermen and seafood dealers and processors.

Field tests of the substance for barbiturates were inconclusive. The powder was sent to a State Bureau of Investigation laboratory in Raleigh for analysis, Schill said.

Test results are not yet available. "The Coast Guard still maintains it was a barbiturate. It was baking soda taken from a shaving kit. A crewman used it for brushing his teeth. That crewman is assistant pastor of a church in Hobucken" in Pamlico County, Schill said.

U.S. Customs officials in Wilmington would not comment today on why the Lorraine Carol was returned to Ireland.

Return of Ireland's boat does not signal any softening of the policy — "absolutely none," said Michael J. Sheehan, a Customs spokesman in Miami.

"It's crystal clear, and getting clearer every day, that the zero-tolerance policy is very tough. But, it's also reasonable, fair and judicious. The fact that they got the boat back points out that we're willing to listen," Sheehan said.

To get his $400,000 scalloper back, Ireland paid a $300 fine and had to sign an affidavit saying the U.S. government was blameless for the seizure and he would not sue the government.

Though he claims he had no knowledge of drugs aboard his vessel, Ireland still faces felony and misdemeanor drug charges. Nine of his crewman also face drug-related charges.

Ireland was "tickled to death" on Monday "but he should be mad as hell. The point is that he got his boat back and they (Customs) are saying he'll get his money, about $57,000, for his catch that was seized and sold," Schill said.

"Conservatively speaking, he's out about $75,000" for fishing days lost and attorney's fees, Schill said.

He said he was elated as he left the Coast Guard dock at Hobucken where the Lorraine Carol was returned to Ireland, but afterward, "I thought what the hell are we feeling good about? We've got to look at the big picture and the big picture is that boat should never have been seized in the first place," Schill said.

He said he believes Ireland was punished by the confiscation without being tried in any court.

"That's been our contention all along. He was presumed guilty and you have to prove yourself innocent when they seize your boat. It's not due process at all," said the executive director.

A meeting on the zero-tolerance policy was scheduled today in Washington, D.C., between Customs officials and Ed Welch, chief counsel for U.S. Rep. Walter Jones, who is chairman of the House Merchant Marine and Fisheries Committee.

"They're trying to put together a policy in black and white" that commercial fishermen can understand and define "constructive seizure," which allows boat owners to continue to use their vessels while forfeiture proceedings are under way, Schill said.

Three other fishing vessels have recently been impounded in North Carolina under zero tolerance because small amounts of drugs were allegedly found aboard. Schill said he hopes those boats are returned to their owners.

"We are not opposed to zero tolerance as such. If they want to enforce zero tolerance and they find personal-use drugs on the captain, burn him. But, in cases where the captain has been found clean, they still seized the vessel. That's what we're opposing," Schill said.

[Submitted by Jerry Schill]

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St. S.W.
Washington, D.C. 20590

JUN 7 1993

The Honorable Earl Hutto
Chairman, Subcommittee on
Coast Guard and Navigation
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find copies of a DOT Fact Sheet on Zero Tolerance and orders sent to all Coast Guard District Commanders regarding an aggressive public education campaign on the program.

This information is part of the overall education effort by the Department and the Coast Guard to increase public awareness and understanding of Zero Tolerance--especially what is expected of boaters and how they can take steps to protect themselves from vessel forfeiture, while keeping drugs off their boats.

As Admiral Yost's orders indicate, this education effort is proactive in nature and targets marine operators, coastal communities, private and commercial boat owners, and seeks to do this through a variety of forums and media.

The Department appreciates your interest in this issue--which we believe will increase boating safety while sending a strong message to boaters and all Americans about not tolerating the use of illegal drugs. I will send you additional printed material on Zero Tolerance as it is completed and sent into the field for public distribution.

Sincerely,

Mark Goodin
Deputy Assistant Secretary for
Governmental Affairs

Enclosures

U.S. Department of Transportation
Office of the Secretary of Transportation

Transportation Facts

Office of Public Affairs

Contact: Department of Transportation
Wendy DeMocker
Tel.: (202) 366-0237
U. S. Coast Guard
Capt. R. Peterson
Tel.: (202) 267-1587
U. S. Customs Service
Dennis Murphy
Tel.: (202) 566-5286

SUBJECT: ZERO TOLERANCE POLICY ON ILLEGAL DRUGS

During the early '70s this country began to turn a blind eye to what was then called "recreational" or "casual" drug use. Americans were experimenting with illegal drugs in record numbers, and many thought such personal use would have no serious consequences for the user or the general public. It has taken many people almost two decades to realize that this mindset was dead wrong. Drug abuse kills thousands of Americans each year. It tears families apart. It has brought violent crime to small town America and made what were already dangerous inner-city neighborhoods drug deathtraps. It has turned children not yet in their teens into pushers and junkies.

The illegal drug trade costs this country an estimated $64 billion every year. Studies indicate that the average drug abuser functions at 67 percent of normal work potential. Today, there are 5-6 million regular cocaine users, more than half a million heroin users and at least 18 million pot smokers. We must face the sad truth. The millions of Americans who use drugs -- many of whom have a glamorous view of drugs -- have made the United States the most lucrative market for the world's drug suppliers. Consequently, when we make it more costly and more painful for drug users, we gradually make this country less profitable and less attractive for drug smugglers.

With this in mind, earlier this spring the Coast Guard announced the "zero tolerance" approach to drug use on U.S. waters. While the Coast Guard and the Customs Service recognize that their main mission is stopping the large scale smuggler/trafficker, they must also make every effort to reduce consumption of illicit drugs.

THE POLICY

The zero tolerance policy strict enforcement of existing law is to reduce the demand for illegal drugs and improve safety on the water by taking action against illegal drug possession aboard boats.

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Under the zero tolerance policy, discovery of any amount of illegal drugs on a vessel within the 12-mile limit of United States waters will lead to the seizure of the vessel and the arrest, where appropriate, of those on board. Outside the 12-mile limit, seizure will result if there is exportation or an intent to import any measurable amount of illegal drugs. Under zero tolerance, the Coast Guard will be strictly enforcing the law during the normal course of its duties. Boardings and inspections will continue to be conducted, as in the past, as part of these duties.

PROCEDURES

The policy is intended to result in prompt action -- to bring into port vessels found to have illegal drugs on board, while making maximum use of limited Coast Guard resources. When a vessel is seized:

- The Coast Guard may escort the vessel to port, where it will be turned over to the United States Customs Service.

- If accompanying the vessel to port would jeopardize other Coast Guard missions, the Coast Guard may choose to direct the seized vessel to proceed to port without escort and report to Coast Guard or Customs authorities, who would be notified of the vessel's expected arrival. Failure to comply with an order to report may result in more severe sanctions.

- Upon receiving a seized vessel, Customs initiates administrative procedures to determine if the owner should be fined and the vessel released, or if additional action should be taken.

- Customs will issue a notice to the owner, lien holder or any other interested party telling them if the vessel is subject to forfeiture, if there are any penalties, and listing the rights of the parties and actions they may take to contest a proposed Customs forfeiture. Any owner or party in interest may obtain release of a seized vessel upon payment of the full amount of the value of the vessel in cash or in an irrevocable letter of credit.

- Seizure and forfeiture are civil actions taken against the vessel and should not be confused with criminal charges made against an individual. It is possible that a boat may be seized and forfeiture proceedings undertaken, while those aboard are not arrested or charged.

- A boat owner may file an administrative petition with the district director of U.S. Customs to present evidence that he or she had no knowledge of illegal drug possession on the vessel and that precautions were taken to prevent drugs from being brought aboard or used on the boat. These mitigating factors will be taken into account, but they are not an absolute defense against forfeiture.

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REASONABLE PRECAUTIONS

Boat owners have the responsibility to ensure that illegal drugs are not brought aboard their vessels. There are a number of actions they can take in that regard. The following suggestions are provided for bare boat charter operators, fishing boat owner/operators, recreational boat owner/operators, and those engaged in coastal trade:

- Post a zero tolerance notice in a visible, public area on board the vessel.
- Ensure that all advertising contains a zero tolerance statement.
- Make zero tolerance a condition of all contracts for boat leases, rentals, and charters.
- Have each salaried crew member sign a statement that he or she will not introduce or use illegal drugs on board.
- Provide drug education for the crew.
- Establish a written company policy in support of zero tolerance.
- Report, via radio telephone, to the Coast Guard any possession or use of illegal drugs discovered on board the vessel.
- Secure those compartments on board the vessel which are restricted to public access.
- Inform friends and others on board your boat that any illegal drug use will not be tolerated.
- Provide cooperation and assistance to Coast Guard and Customs officers as they carry out their boarding duties.

It is recommended that boat owners take as many of these precautionary measures as are appropriate. In the event that illegal drugs are discovered by a Coast Guard boarding party, the vessel normally will be seized. The owner/operator's efforts will, however, be considered during the administrative forfeiture proceeding.

For additional information contact:

Commandant (G-TPA)
U.S.Coast Guard
Washington, D.C. 20593

Commissioner
U.S. Customs Service
1301 Constitution Ave, N.W.
Washington, D.C. 20229

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FROM COMDT COGARD WASHINGTON DC//G-C//

ALDIST

ACCT CG-W2GARC

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ALDIST /88

COMDTNOTE 16247

SUBJ: ZERO TOLERANCE PUBLIC AWARENESS PROGRAM

A. COMDT COGARD WASHINGTON DC 111850Z APR 88, ALDIST 067/88

B. COMDT COGARD WASHINGTON DC 210645Z MAY 88, ALDIST 098/88

1. ILLEGAL DRUGS HAVE NO PLACE IN THE MARINE ENVIRONMENT. THOSE WHO OPERATE VESSELS ON OUR NATION'S WATERWAYS MUST BE FREE FROM OPERATING UNDER THE INFLUENCE OF ILLEGAL DRUGS AND CONTROLLED SUBSTANCES. BOATERS, WHETHER RECREATIONAL OR COMMERCIAL, HAVE A RESPONSIBILITY TO THEMSELVES, TO OTHERS ON BOARD, AND TO OTHER VESSELS TO ENSURE THAT NOTHING INTERFERES WITH THE SAFE OPERATION OF THEIR VESSELS. THE COAST GUARD ZERO TOLERANCE APPROACH COMPLEMENTS THE SECRETARY'S DESIRE FOR A DRUG FREE TRANSPORTATION SYSTEM, AND COMPLEMENTS OUR NATION'S TOTAL WAR AGAINST DRUG ABUSE.

2. RECENT MEDIA AND PUBLIC REACTIONS INDICATE THAT THE GENERAL PUBLIC DOES NOT HAVE A CLEAR UNDERSTANDING OF THE INTENT OR NEED FOR

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CAPT J.C.TRAINOR,G-OLE,X71890

P. A. YOST
Admiral, U.S. Coast Guard
COMMANDANT

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A ZERO TOLERANCE APPROACH. ACCORDINGLY, IN ORDER TO GAIN PUBLIC ACCEPTANCE OF OUR ZERO TOLERANCE POLICIES OF REF A AND B, THE COAST GUARD WILL UNDERTAKE A PROACTIVE PUBLIC EDUCATION AND AWARENESS PROGRAM. IN THIS EFFORT, ALL COAST GUARD LEVELS SHOULD SEEK OPPORTUNITIES TO EXPLAIN WHAT THE BOATING PUBLIC CAN DO TO SUPPORT THE PROGRAM AND ALSO TO PROTECT THEMSELVES FROM RISK OF VESSEL FORFEITURE.

3. TARGETS FOR THIS EFFORT SHOULD INCLUDE ALL ASPECTS OF THE COMMERCIAL MARINE INDUSTRY, COMMERCIAL FISHING ASSOCIATIONS, BOATING AND RECREATIONAL ORGANIZATIONS, MARINAS, INTERESTED CITIZENS GROUPS, LEASING AGENTS, COASTAL CHAMBERS OF COMMERCE, SERVICE CLUBS LIKE THE ROTARY AND KIWANIS, ETC. THE CG AUXILIARY SHOULD INCLUDE INFORMATION ON ZERO TOLERANCE IN ALL THEIR CLASSES AND CONTACTS INCLUDING COURTESY EXAMINATIONS, AND SHOULD IDENTIFY OTHER OPPORTUNITIES WHERE THEY CAN EXPLAIN IT. ZERO TOLERANCE SHOULD BE A PART OF ALL COAST GUARD SPEECHES AND INFORMAL PRESENTATIONS ON MARINE SAFETY; COMMERCIAL VESSEL SAFETY, BOARDINGS AND INSPECTIONS SHOULD INCLUDE ZERO TOLERANCE INFORMATION; AND IT SHOULD BE EMPHASIZED BY ALL OUR PEOPLE IN FACE-TO-FACE CONTACTS WITH THE BOATING PUBLIC.

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4. LOCALLY REPRODUCIBLE FACT SHEETS AND TALKING POINTS WILL SHORTLY BE DISTRIBUTED TO ALL CG UNITS TO EXPLAIN ZERO TOLERANCE. AS NEW MATERIAL BECOMES AVAILABLE, IT WILL BE DISTRIBUTED THROUGH PUBLIC AFFAIRS OFFICES. ANY NEW IDEAS GENERATED IN A DISTRICT SHOULD BE SHARED WITH OTHER DISTRICTS THROUGH OUR PUBLIC AFFAIRS NETWORK.

5. FROM WHAT IS EVIDENT IN THE CURRENT NEWS MEDIA, WE NEED SPECIAL EFFORTS TO GET THE BOATING COMMUNITY EDUCATED AND INVOLVED IN THE DRUG FREE PROCESS. TO THIS END, ALL SENIOR CG PERSONNEL ARE URGED TO EXPRESS THE ZERO TOLERANCE THEME IN THEIR PROFESSIONAL AND PERSONAL CONTACTS.

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